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ABSTRACT

This review of 150 documents from various countries describes probation or suspended sentencing systems, their use and effectiveness, legal and historical contexts for probation, and variations in eligibility criteria. Issues addressed by these materials include the following: (1) the movement of probation services toward a more client-centered focus; (2) the parallels between probation approaches and social/economic development; (3) the variances in purpose and structure of probation services among foreign countries; and (4) the effectiveness of systems using deferred sentencing rather than, or in addition to, probation. (Author)

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Critical Issues in Adult Probation

International Assessment of Adult Probation

by
Paul C. Friday, Ph.D.

September 1979

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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CONTENTS

I. INTRODUCTION 1

A. Objectives and Philosophy in Establishing Probation 8

B. Distribution of Probation Services 9

C. Methodology 10

II. SYSTEMS WITH SOME FORM OF PROBATION 12

A. Variations in Legal Structure and Responsibility 12

B. Attitudes Toward Probation 14

C. Structure and Organization of Probation Services 17

D. Work of the Probation Services 28

E. Utilization of Probation Services 40

F. Effectiveness of the Use of Probation 45

G. Special and Innovative Modes of Probation 56

H. Summary 73

III. SYSTEMS UTILIZING LEGAL PROVISIONS FOR THE SUSPENSION OR DEFERMENT OF SENTENCE 79

IV. IMPLICATIONS AND TRENDS 90

APPENDIX--BIBLIOGRAPHY 95

ABSTRACT

This review of 150 documents from various countries describes probation or suspended sentencing systems, and their use and effectiveness.

Probation originated in America and now exists in 25 countries. Its objectives are to help and treat as well as control offenders, a dual and sometimes conflicting purpose which can pose problems for probation officers. Probation services and structures vary from a fully professional state organization (e.g., Great Britain and India) to a centralized but mixed system employing both professionals and volunteers (e.g., Belgium and France) where a clear division of labor exists between the judge, control agents, social assistants, and volunteers. Some countries use a system of deferred sentencing (e.g., Federal Republic of West Germany, Soviet Union, and Austria) whereby the sentencing decision is postponed pending some change or action on the defendant's part.

In reviewing probation programs in various countries, this volume assesses the approaches, attitudes, and effectiveness of such programs as well as special and innovative modes. It also examines legal and historical contexts for probation, and variations in eligibility criteria.

Probation services appear to be moving towards more client-centered activity on an international level. Furthermore, the use of probation and its approach tend to parallel social and economic development. When probation fails, it is generally because both staff and offenders have poor social skills, inadequate education or vocational training, and other social and economic deprivations.

References are provided.

International Assessment of the Use of Adult Probation

Paul C. Friday*

I. Introduction

The institution of probation appeared in 1841 in Boston, Massachusetts and in England and spread shortly thereafter to Australia and New Zealand (White, 1977). It was officially adopted in the United States in 1878 and in England in 1907 (Bochel, 1976). Such an organized institution of supervision is found in the laws of approximately 25 countries today, though for nearly a third of them, it is rarely used.[1] The concept of giving an offender another chance, however, with or without direct supervision, and without imposing immediate punishment, is also utilized under the laws of suspended sentence in 10 or 15 countries, some of which have probation as well.

The primary distinction being made between probation and suspended sentence is that probation is considered to utilize some external supervision while suspended sentence does not. Originally, this study attempted to look only at systems having probation per se either in operation or in the law. As the research evolved, the distinction between probation and "probation-like" activity became less clear. Some probation systems provided for supervision, others did not, and some of the conditions imposed on those given suspended sentences often resembled conditions imposed in other systems on probationers.

Despite the similarities in the two systems, there are historical and

*The author wishes to acknowledge the editorial assistance of Timothy W. Chadsey.

[1] Countries having laws establishing probation include: Austria, Australia, Belgium, Canada, Federal Republic of Germany, Finland, France, Great Britain, Greece, Hong Kong, Iceland, India, Ireland, Italy, Japan, Kenya, Nigeria, Norway, Pakistan, Philippines, Singapore, Sweden, British Somalia, U.S.A. (There may be others, undisclosed by this research).

legal reasons for the present organization of probation and "probation-like" activities. The systems are both legally and conceptually distinct and reflect, above all, legal and political evolution.

The concept of probation pre-dates its institutionalization in either Boston or England. Its genesis is perhaps best understood in the context of the medieval practice of "preventive justice." This practice was dominant in England (Timasheff, 1943) in the form of imposed peace, i.e., the accused or suspected gave assurances and some form of surity or pledge for continuing to keep the peace. In other words, some form of bond or pledge was required of the offender and in return he was permitted to remain free in the community. Such a system was also found in medieval France, Germany, Switzerland, and Hungary. Statutes available from Lithuania in the year 1529 went beyond the pledge after an act had been committed and contained the clauses whereby an individual who was <u>suspected</u> of having malevolent intentions in regard to another was compelled to find surity for good behavior (Timasheff, 1943). This provision was also found in the later Moscow code of 1649.

The actual history of the transformation from imposed peace to probation may not be of immediate concern today, but the philosophy is. In preventive justice the idea of personal recognizance as well as specific deterrence by the threat of <u>future</u> punishment are cornerstones. The development of probation involved specifying the actual conditions which must be met if punishment is to be avoided. The conditions were criteria for <u>suspending</u> the penalty. They were not the penalty itself. Instead of inflicting punishment at that point in time, another chance was given to the offender. Precursory signs of this philosophy are found in the municipal law of Augsburg in Germany during the 13th and 14th centuries according to which the imposition of the sentence

could be suspended if the offender succeeded in convincing the judge that he would commit no further offenses (Timasheff, 1943).

The fact that the institution of probation was initiated in America and not Europe is a reflection of an increased emphasis on individualism in America which carried over to individualizing justice. Prior to the nineteenth century there existed no corresponding emphasis, or at least no perceived need for any reason to either expand the use of preventive justice or institutionalize it. This was in part due to the impact of the ideas of the Enlightenment expressed by Montesquieu and the legal philosophies of the Classical Tradition of Beccaria which created a reaction against individualism and inhibited the development of probation in some countries. The legal trend was reflected in a greater emphasis on the punishment factor and the free will of the offender. Consequently, legal provisions failed to evolve in most of Eastern and Western Europe which could provide for probation as we know it, yet they still retained the possibilities of suspending the punishment under the historical traditions of preventive justice.

Probation was most likely to develop, as in America, where the legal structures evolved under the influence of Positivism or the philosophy which emphasized the part played in crime by personal and social factors. The Positivist School emphasized the individual biological and genetic make-up as a factor in crime. In the systems influenced by the Positivists it was considered evident that the threat of punishment was inadequate as a deterrent and that the application of punishment was not a suitable method in itself of preventing recidivism (Nuvolone, 1952). Therefore, simply retaining the possibility of suspending the punishment failed to meet the perceived need to deal with the offender himself. The legal structure needed to have a

way of reacting to the individual, not only his act. Probation could serve that need by becoming a sanction in and of itself.

The difference between the systems of probation and probation-like activity lies, therefore, at the philosophical crossroad in legal history. It was inconsistent to interject individualized, treatment concepts into the law if the legal tradition followed the classical philosophy of criminal law which emphasized rationality and deterrence. The concept of probation runs counter to the retributive character and deterrent force of punishment as seen in that classical tradition and is seen to be based less on the offense committed, and more on the personality or individual circumstances of the offender and on his capacity to reform (Ancel, 1952). As such, probation became the embodiment of the principle of individualization of sentencing (Shah, 1973).

Today, the philosophical intent to provide a second chance for an individual is part of both systems and the opportunity to suspend punishment exists in most legal structures. The form varies, however, between institutionalized probation services and suspended sentences. Some systems, especially in Western Europe, have both suspended sentence and probation. While some may assume that the sanctions are essentially the same, the legal principles are distinct. Likewise, the basic legal principles operating in systems without probation but with probation-like activity preclude probation. To many, the distinctions may not seem significant, but, legally, probation and probation-like sanctions emerge from the following alternative legal procedures (European Committee on Crime Problems, 1970):

(a) Waiving of prosecution by the Public Prosecutor possibly with use of conditions similar to those imposed by probation. This procedure avoids

both conviction and sentence and may be referred to as diversion or conditional suspension of prosecution.

(b) Suspension of the pronouncement of a penalty (suspended sentence) comes after conviction and may be combined with supervision. In some states this measure is considered as offering better prior conditions for treatment than actually pronouncing a sentence and then suspending it. The offender, not being punished, has an interest in behaving well to avoid eventual pronouncement of sentence. The judge is not restricted by a penalty already fixed. Where further proceedings are instituted before the probation period has been terminated, the judge is able to revoke the suspension and impose a suitable sanction. The legal framework of other states does not permit such a suspension. In these states it is considered contrary to the principle of equality to determine the sentence of a person according to his behavior during the probationary period. In addition, it is deemed desirable for the offender to know the extent of his penal responsibility from the outset.

(c) Suspension of the execution of a penalty pronounced by the court, with or without placing the offender under supervision (sursis simple, sursis avec mise a l'epreuve respectively). Here the penalty is actually pronounced, but then suspended. This measure is considered preferable in those countries where a penalty must follow a conviction. Sursis simple is, in this sense, much like preventive justice while sursis avec mise a l'epreuve is more like probation. However, sursis simple may impose "conditions" and is sometimes referred to as conditional sentence. Most important is the fact that sursis (either form) is a suspension of the execution of a penalty, not a penalty in and of itself.

(d) Probation pronounced directly as an autonomous measure (the sentence

being subject to reappraisal in case of the offender's violation of the requirements). In the countries which use it, this measure is considered to offer certain advantages. It implies the recognition by society of probation as a sanction on the same footing as any other measure and gives the offender a clear idea of what is required from him.

Suspended sentence (b or c above) and probation are measures designed to mitigate the execution of a penalty, generally incarceration. The objective is to avoid the disadvantages of prison experience while fulfilling the objectives of societal protection, rehabilitation, and prevention. Such measures have been seen to be most appropriate for the occasional or first offender and for the young. According to Resolution 65, passed by the Ministers' Deputies of the Council of Europe in 1965 (European Committee on Crime Problems, 1966):

> Considering the disadvantages that imprisonment may have, particularly in the case of first offenders;. . . (we) recommend governments to ensure that: (a) member countries' legislations should authorize the judge, or other competent authority, to substitute for a sentence involving deprivation of liberty, or for the execution of such a sentence before it has been carried out, a conditional measure (suspended sentence, probation order, or similar measures) in the case of any person who is a first offender and who has not committed an offense of special gravity; (b) the measures provided for above shall be taken by the competent authorities in the light of the circumstances of the case, of the acts committed, and of the personality of the offender, including the danger he may represent for society and the likelihood of his mending his ways;. . .

As has been pointed out, European countries traditionally have had the legal provisions to suspend either the pronouncement of a penalty or its execution. The mitigations surrounding the use of these forms of suspended sentence have been enumerated by the Council of Europe as offense circumstances, personality, and the offense itself.

They recognize that unlike sursis in its pure form, probation provides

for supervision of the offender and the establishment of behavioral conditions unrelated to the commission of another offense. Legally, probation is imposed as a sentence, while sursis is the suspension of execution of another penalty already pronounced. If the sentence is simply suspended, little control or supervision is in the hands of the authorities, and many offenders never receive the specialized or therapeutic treatment assumed to be needed to avoid future criminal involvement.

The distinction between sursis and probation is not always clear. This is particularly the case in countries which, already possessing the power to suspend sentences, have found it relatively easy to add conditions for release similar to those of probation. For example, in Belgium, a circular of the Belgian Royal Prosecutor introduced probation without new legislation by merely adding supervision to sursis, and pointed out that conditional sentencing,

> as it exists at the present time, must suffice for occasional offenders, i.e., for those for whom it is sufficient to warn them and to have the threat (of penalty) suspended over their head in order that they may change their ways (United Nations, 1965:79).

On the whole, however, while probation is legally possible in Europe, the suspended sentence has been preferred (Elton-Mayo, 1964). Probation is not considered a substitute for punishment but is considered a sanction in its own right. Sweden is the only country to legally differentiate between probation and conditional sentence. Chapter 28 of the Swedish Penal Code provides that probation be imposed when supervision is required and that the suspended sentence be used in all other cases (suspension of the pronouncement of a penalty). Thus, the conditional sentence has no supervision as under pure sursis. When an offender violates the conditions of his probation, and since no penalty has actually been suspended, the court is free to impose any new penalty and is not bound by the conditions of the previous sentence.

Objectives and Philosophy in Establishing Probation

The use of probation in the traditional sense is predicated on the assumption that an offender needs some form of help or care, perhaps even treatment, as well as control. These three objectives, help, treatment, and control, are often conflicting and incompatible. In its helping aspect, probation affords the offender the opportunity of acquiring insight into, and if possible overcoming, the personal and social problems thought to be associated with his offense. In its controlling aspect the probation service is traditionally required by the court to supervise the offender's social and personal adjustment in the community by restricting his personal habits, work, or residential conditions. In a sense, the control aspect of probation becomes a substitute for imprisonment (Cornil, 1970). Treatment, on the other hand, implies that the offender has personal maladjustment problems in contrast to being socially disadvantaged.

In establishing Resolution 65, the Council of Europe in 1965 emphasized the advisability of restricting punishments involving the deprivation of liberty. Thus, the belief underlying this resolution is that imprisonment is not seen to be especially effective since it involves social rejection and isolation, loss of contact with family and work, and the hardening of criminal attitudes (European Committee on Crime Problems, 1970). These are seen as contributing to the offender's problems, not to their solutions.

Conditional sentences (sursis and probation) are seen to avoid these drawbacks, are perceived as more humane, and certainly are less costly (Probation and After Care Service, 1974). Provisions are available for the offender to remain in the community with supervision and to adapt himself to the social norms which he previously failed to emulate on his own (Pansegrown, 1952).

As Bevan (1972) suggests in describing probation services in Australia, learning to function in the free community is learned only by being in that community under the supervision of persons trained and qualified to assist in the learning process.

Essentially, probation is a mode of executing both a penalty and a method of individualizing treatment with the principal goal of reintegration and resocialization of the individual (Tomic-Malic, 1977). As such, both individual needs and social relationships are involved.

Probation, distinct from suspended sentence, functions in the dual role of helping the offender while at the same time controlling him socially, a role which is often difficult to reconcile satisfactorily. This often leads to role conflict for social workers and probation officers (Nelson, 1969), yet both elements of help and control have as their objective the reassuring of society and the courts that offenders, who might otherwise be isolated from the community by custodial care, are not simply left in the community on their own.

Distribution of Probation Services

Probation services around the world vary according to the dominant legal philosophies in a given country. Each country has its own way of providing another chance for the offender, of setting conditions, and of enforcing them.

For the purpose of this report, systems have been selected on the basis of whether probation exists as a sanction or whether the system relies on suspended sentences or conditional sentences to achieve the individualized help and/or control objectives associated with probation.

The geographical distribution of the systems is a reflection of political

history. The legal history in Great Britain and the United States gave rise to probation. Probation has thus been incorporated into most of the countries influenced either by British or American colonialism, post-war domination, or local assimilation, e.g., India, Hong Kong, Australia, Japan, and the Federal Republic of Germany.

Continental Europe retained the legal philosophies supporting either the suspension of the pronouncement of a penalty or its execution. Therefore, while probation as a sanction may be used, it exists side-by-side with sursis. Eastern Europe has had a different legal history and relies more strongly on the conditional sentence as opposed to the suspended sentence, utilizing a unique form of collective social control to enforce the conditions.

It should be made clear, however, that while this report typologizes the research into systems having some form of probation and those relying on suspended or conditional sentences, each country has, in its own wisdom, selectively developed its laws to reflect its needs and objectives.

Methodology

The materials presented in this report represent various attempts to obtain data from countries having a probation or probation-like system. Letters were sent to Ministries of Justice in nearly one hundred countries asking if probation (including sursis) existed and, if so, the name of the best resource and/or any documentation. In addition, individual criminologists and criminological institutes were contacted asking for the same information.

In some countries, materials were readily available, while in others they were either scarce or copying facilities were poor. Some materials were sent, others picked-up or read on personal visits, and still others found as footnotes in various documents. Approximately 150 documents were located and read,

many of which were merely descriptive of the system of probation or arguments for its establishment.

Some documents have probably been overlooked. The author has, however, attempted to include all those which have come to his attention but has been limited by the degree of cooperation of local resource personnel, time, and cost.

II. Systems With Some Form of Probation

Variations in Legal Structure and Responsibility

Statutes providing for probation as a sanction in itself vary in terms of specificity regarding eligibility criteria and in terms of the conditions which may be imposed on the offender. Many countries provide for probation only in very vague terms. In the Philippines, for example, Presidential Decree No. 968, the Probation Law of 1976, simply states in section 4, Grant of Probation (Marcos, 1976):

> Subject to the provisions of this Decree, the court may, after it shall have convicted and sentenced a defendant and upon application at any time of said defendant, suspend the execution of said sentence and place the defendant on probation for such a period and upon such terms and conditions as it may deem best.

In other countries, such as Japan (Ministry of Justice, 1970a), the law is quite explicit defining both the acts and offenders who are eligible.

In general, probation is limited by the type of offense committed and/or by the original legal sentence. Such limitations may be specific as in the case of Kenya (Republic of Kenya, 1972) which excludes probation for vagrancy, drunkenness, simple assault, and possession of African Spiritual liquor, or it may be general as in some states of Australia. Section 508(1) of the Penal Reform Act in Victoria, Australia states (Mathew, 1961a):

> Any convicted person may be placed on probation for any offense for which imprisonment may be imposed, other than default of a fine: if, in the opinion of the court, having regard to the circumstances, including the nature of the offense, and the character and antecedents of the offender, it is expedient to do so.

It is, therefore, general practice to leave the decision to the "opinion of the court." Some statutes give basic guidance on the conditions which should affect this opinion such as the character, antecedents, age, health,

or mental condition of the person charged, to the trivial nature of the offense, or to the extenuating circumstances under which the offense was committed.

Statutes are more likely to be specific when they deal with the conditions of probation. Such conditions generally involve residence, employment, medical and psychiatric assistance, and social relationships. For example, Article 34(2) of the Japanese Penal Law states (Ministry of Justice, 1970a):

> Every person placed under probationary supervision shall observe the following conditions in addition to the special conditions prescribed under the provision of Article 31 paragraph 3 or Article 38 paragraph 1:
>
> (1) To live at a fixed residence and engage in an honest calling.
>
> (2) To be on good behavior.
>
> (3) To keep away from persons who are of criminal or delinquent tendencies.
>
> (4) To ask his superior for permission in advance for changing his residence or going on a long journey.

The actual conditions imposed are determined by the Probation Office, not the judge.

Nearly all statutes include similar wording and similar obligations for the probationer. Australia (Keefe, 1972) and France (Elton-Mayo, 1966) both include in the statutes provisions for individualized treatment as well as regulations on behavior.

In reviewing all of the legislation on probation from the vague (Philippines) to the specific (Japan), the only common element is the general unwillingness of the legislation to interfere in the sentencing discretion of judges. The application of probation will have little to do with the legislative wording and as Potas (1976) argues in Australia, the courts' "philosophy" regarding the purpose of the law becomes the primary factor in the use of probation.

Thus, studies of judicial attitudes become more important in understanding the actual use of probation than the statutes themselves.

Attitudes Toward Probation

Little has been done to assess probation in terms of the attitudes toward it by individuals involved in the system. In France, Edith Falque (1977) attempted to determine if judges' perceptions of probation interfered with the proper and efficient functioning of the system. Her study has value internationally because of the legal structure of probation and the use of a probation committee.

France utilizes both sursis simple (conditional sentence) and sursis avec mise a l'epreuve (conditional sentence with supervision or probation). Demonstrating the interface of legal philosophy, a sentencing judge (magistrat du siege) sets the sentence along with any number of legally prescribed conditions, and the judge of probation (juge d'application des peines), acting as chairman of the probation committee, is responsible for the individualization of the sanction and has the authority to determine which obligations set by the sentencing judge are relevant for a particular offender (Elton-Mayo, 1964).

Falque (1977), through extensive interview's, attempted to typologize judges in terms of their perceptions of the functions of probation and their subsequent utilization of it. Sixty-two judges were interviewed and four ideal-types were generated even though neither the methodology nor statistical differences were discussed.

In general, Falque found that sentencing judges tended to adhere to the control function, while judges responsible for the application of the penalty (judge of probation) tended to select conditions of probation which could

be viewed as providing assistance and help. Sentencing judges, however, were not all of the same type. Falque suggests there is (1) the Traditionalist Judge who, following the new classical views, sees deterrence and the offense as primary and most often responds in terms of sentencing to the act; (2) the Social Judge who previously served as the judge of probation and tends to be more individualistic in sentencing and responds to the offender and his need for treatment; (3) the New Judge who is less than 35 years old and generally holds to views similar to the social judge though his concern is with civil liberties. He appears not to have faith in treatment or resocialization; and (4) the Humanitarian Judge who is by temperment, philosophy, and experience a liberal. He tends not to be repressive, favors nonincarceration, and often sees offenders as victims.

The importance of these types of judges is illustrated in each's willingness to apply suspended sentence with supervision. Judicial attitudes are in turn seen to affect the actual use of probation in France, the types of offenders placed under supervision, and ultimately the success or failure of the program.

Social and Humanitarian Judges tend to view probation in terms similar to the judge responsible for the application of the penalty (probation judge) and impose conditions which are then carried out by the probation committee. Of the four types, only the Social Judge believes probation can be successful. The Traditionalist Judge sees it as too costly and reinforces the irresponsibility of the offender; the Humanitarian Judge feels there are insufficient resources to properly implement probation, and the New Judge thinks probation is dangerous to civil liberties since it is a social control mechanism and could easily evolve into a political control mechanism.

Attitudes toward the objectives of probation and the philosophical elements

of criminal law appear to play a role in sentencing. If nothing else, the French study tends to show the importance of the system itself over either the offender or the offense itself, and that judicial attitude toward sentencing plays a role which has yet to be clearly identified.

In Belgium, another attitude survey was conducted of persons involved with the Courts of First Instance. The purpose of this survey was to determine the degree of acceptance of probation and its integration into the legal system (Versele, 1969). As indicated above, Belgium established probation in addition to suspended sentence by Royal Decree in 1964. Versele attempted to determine the degree to which probation as a concept was accepted and its actual application. The survey was taken only three years after the Royal Decree and no scientific methodology was employed in either sample selection or analysis. The survey tended, according to the author, to overrepresent magistrates and non-lawyers in the Brussels area.

Although the attitudes were not scaled, they did appear to be related to the age of the respondent. Reservations about probation were based less on the principles than on the problems of implementation. In general, probation was favored over simple suspension of sentence. Prosecutors, judges, lawyers, and probation workers all viewed probation as serving the dual function of assisting the offender and protecting society, though 44 percent of the probation workers saw the assistance function to be primary, while only 29 percent of the judges viewed it in this way (Versele, 1969:622). Judges were more inclined to consider societal protection and control as primary.

Regarding lawyers in particular, Versele indicated a general lack of familiarity with the operation of the probation commission which applies the court order as well as "dogmatic prejudice," i.e., resistance in principle

without any knowledge of the system. It was believed the use of probation in Belgium may reflect more the perception of its application than acceptance of its objectives.

In discussing attitudes there is little doubt about the consensus against the use of incarceration and the belief in developing alternative responses such as probation (Council of Europe, 1976; Sparks, 1970). Attitudes toward probation are important and its use may be more a function of judicial philosophy or the personal characteristics of judges than the actual merits or weaknesses of probation itself.

Structure and Organization of Probation Services

Probation legislation reflects both control and assistance philosophies, probation utilization reflects judicial attitudes, and probation application becomes a function of the structure and orientation of the probation service. The objectives of the law, judiciary, and probation service may be in conflict with each other. There exists tremendous disparity between legal philosophy and its application. Versele (1969) indicates that while judges reserve the discretionary privilege to establish the conditions of probation, prosecutors, judges, and lawyers feel that the less formal contact established in probation commissions permit greater knowledge of the offender and his needs. This raises the question of who is in the best position to determine the conditions of probation, the judge or the probation service.

There is a conflict in the system of probation. Legislation is generally vague, giving wide latitude and discretion to the judiciary, which in turn directs the probation services to carry out its directive. Is probation a method of control or a promise of help? While the law has generally tried to incorporate both philosophies, the judiciary tends to stress either, depending

upon a judge's particular inclinations, and probation services have generally tended toward the assistance role while being perceived by the offender as fulfilling a control function.

The extent of the conflict between the control and assistance functions in probation varies according to the structure of the probation service itself. This service is either one or a combination of the following types: (1) an arm of the court; (2) an independent state agency; (3) a private assistance group paid by the state; or (4) volunteer.

All probation services must ultimately answer to the court and operate at the request of the court, but the independence of the probation service varies in degree according to legal philosophy and the historical conditions in each country surrounding the delivery of social services.

There are basically two schools of thought regarding the role of the judiciary: one maintains that the role of the judge terminates with the sentence, the other that it does not. In Europe, in particular, the trend has been toward greater judicial involvement after the sentence. One of the reasons for this change was the tendency of the system to divorce the offender's real and immediate problems from the concerns of the judge, a divorce which resulted in inadequate individualized treatment. Magistrates were subsequently encouraged to take a more active role in the sentencing of the offender.

Some countries like France have gone much further in increasing judicial involvement after sentencing. The French Code of Criminal Procedure of 1959 provides for the position of "judge of the application of the penalty (juge d'application des peines)," which is similar to Italy's juge de survellance wherein the judge is also chairman of the probation committee. As an individual in the judicial hierarchy, he is responsible for the individualization of

penal treatment. In France there are 116 such probation committees headed by judges (Tomic-Malic, 1977). The judge in each case has the power to interpret the conditions of probation established by the sentencing judge (magistrat du siege) and determine the form of supervision and the special conditions which may be attached. He also has the right to terminate probation as a success or failure.

The committee structure under the courts has a clear division of labor. Under the judge of the application of the penalty are grouped probation agents, social assistants, and volunteer workers. The responsibilities reflect the dual requirements of probation: control and help. According to Elton-Mayo (1964), probation agents are usually men and are responsible for the authoritative supervision of offenders; social assistants are usually women social workers and are responsible for dealing with personal and social problems of the offender. Volunteers have the actual day-to-day contact with probationers and report problems to the other people on the committee.

In most of the systems reviewed for this report, probation services were attached to the court, but were actually under the control of some executive office such as the Ministry of Social Affiars, Corrections, or Justice. Within this structure there were varying organizational forms including the committee concept in Great Britain, the centralized probation service in Japan, and those falling between these two.

In Britain, the actual administration of the probation service is the responsibility of local probation committees, composed of magistrates who appoint and pay probation officers, assign them to courts, and provide them with clerks and offices (Elton-Mayo, 1966). The probation service is primarily professional as it is in India, Singapore, and other countries or territories

influenced by British law and customs.

On the European continent a different pattern emerged which utilized and centralized previously private social service agencies. In the Netherlands, for example, organizations such as the Netherlands Society for the Moral Improvement of Prisoners and the Salvation Army used private financial resources to aid the offender. Other separate societies developed within religious denominations, and offenders sought assistance according to their own religious convictions. In the course of twentieth century economic and social development in Holland, probation services expanded, legal philosophies and sentencing policies changed, and private societies made increasing use of professional workers. These developments were accompanied by a rise in costs which could no longer be borne by voluntary organizations. The result was an amalgamation of private probation societies into the National Probation Association.

Similar developments occurred elsewhere on the continent. In Germany the private Probation Assistance Association and Offenders Aid Association developed into what could be called private federal organizations. These federal organizations, employing a large staff of professional social workers, carried out the directives from the court. Norway also centralized 58 rehabilitation societies into the Federation of Norwegian Rehabilitation Societies (Elton-Mayo, 1964).

Financial exigency is a factor in the utilization of private societies in implementing probation. The professional staff is relatively small in most cases, while the use of probation as a sentence has been increasing. Subsequently, many systems utilize a large number of volunteers.

Japan is perhaps the best known system utilizing volunteers, and their selection, appointment, and obligations are clearly defined in the law

(Shiono, 1969).

One underlying assumption in employing volunteers is that probation is a method of treatment used to rehabilitate an offender in the community. Therefore, the understanding and cooperation of the community is indispensable. Thus volunteer probation officers have a special place in the administration of probation services.

In Japan, the volunteer probation officers are part-time public officials appointed by the Ministry of Justice from among the residents of the area where a probationer lives. This person is appointed after being recommended by the Volunteer Probation Officers' Selection Council set up in each district at the Probation-Parole Supervision Office. These candidates must be financially stable, command the confidence and respect of their community, and must be eager to help offenders rehabilitate themselves. As a result, the selection of middle and upper-class persons is favored with almost 50 percent being over 60 years of age. Less than 18 percent are under 50 (Shiono, 1969). Also, only about 20 percent of volunteers or hogoshis are women since one of the requirements is that the volunteer be able to deal with the public and the average, tradition-bound Japanese woman has not been given access to this kind of opportunity.

Since the volunteer is a person of great prestige, it is easier for him than others to find a job or a place to live for his client. Because further misbehavior of a client would cause the community public embarrassment, the hogoshis will do everything within his power to help his client (Hess, 1969).

Volunteers are appointed for a term of two years and their primary duty is to assist government probation officers in exercising probation or parole supervision under the direction of the chief of the district Probation-Parole

Supervision Office. Volunteer probation officers submit a monthly report on the result of supervision with respect to each probationer or parolee and contact the government probation officer whenever necessary to receive advice and direction. The volunteer assumes both assistance and control functions, but refers serious problems to the professional. Volunteer positions are honorary, i.e., they are not paid salaries; volunteers, however, are reimbursed in full or part for the expenses they have actually incurred.

Probation officers in Japan come from all walks of life. Agriculture, forestry, trade, business, the priesthood, law, and housewives. This system is seen to have great advantage in the administration of probation in that it is deeply rooted in the core of the community; but gradually, due to rapid social changes - breakdown in community solidarity - and mobility, and increased individualism - it has become difficult to find successors to these volunteers.

While volunteer utilization is pragmatic, it has general rehabilitative objectives. According to a proposed project for volunteers in Hong Kong (Woo, 1975), community involvement in probation has two objectives: (1) to counteract against stigmatization of formal sanctioning, and (2) to provide opportunities which do not exist within the offender's social circle.

The system in Sweden represents a similar mixture of professional and volunteer services. Probation is handled by the Swedish Prison Board. Probation officers also handle parole cases and work within institutions. The Prison Board is a separate institution from either the courts or the Ministry of Justice.

Sweden is divided into 45 districts with each district having at least one supervisory board, a probation officer (professional) responsible for investigation and administrative obligations, and probation supervisors

(volunteers) responsible for the practical implementation of the probation order. Approximately 90 percent of all probationers have volunteer supervisors (Frej, 1974a). The probation officers themselves supervise the more difficult cases (Elton-Mayo, 1964).

Probation service is structured in a variety of ways given the variants in cultural and political organization. Perhaps the strongest factor linking these systems, however, involves the manner in which each attempts to meet the goals of control and assistance. Professional services tend to be more control oriented while volunteer and private services tend to be more assistance oriented, i.e., responsive to immediate personal needs.

This dichotomy of objectives will always be present in the structure of organizations since it is founded on conflicting legal objectives: the protection of society (control) on the one hand, rehabilitation (help, assistance, treatment) on the other. In some of the research data, probation officers have been shown to be viewed as control authorities (Hauge, 1969), a perception which has tended to reduce their effectiveness. When probation officers are viewed as extensions of the law and authority, the assistance role they are to play is minimized. To try to compensate for this, the French system tends to divide the labor of control and assistance which reduces the role conflict for the workers. Other systems, like the Swedish and Danish, divide the control and assistance function between professional and volunteer.

The resolution of the conflict is not easy since, as the Council of Europe concludes, probation needs to employ a professional and highly qualified staff. This staff in principle should be employed full-time (European Committee for Crime Problems, 1970). The disadvantage of a volunteer staff is the inadequacy of training, although in some cases voluntary work may be preferable.

This is especially true when a less formal and more spontaneous relationship between worker and client is desired (European Committee on Crime Problems, 1970).

Some work can only be undertaken by trained professionals such as those in the probation service in the United Kingdom. Other work is best accomplished by laymen. There are two quite distinct types of work required, and professional and voluntary workers are each equipped in their own way to carry out these different aspects of the work. In most European countries probation services are developing in a way that shows a fundamental recognition of this point. In the past, there was usually a division between the trained officials who dealt with probation and statutory after-care (parole), and the voluntary workers who dealt with after-care which was not officially supervised. There was often no contact between these two branches and sometimes even a certain rivalry existed. In the structure which is beginning to emerge in all countries, the professional workers form the center of the organization, working closely with - if not actually directing - the volunteers (Elton-Mayo, 1964).

Generally speaking, the professionals take on the difficult cases or the more serious control problems and hand over the others to the untrained voluntary workers. This may not always coincide with an offender's legal status. The assignment to a professional or volunteer depends upon the needs of the individual. In some cases, voluntary workers who are supervised by trained officials may be asked to deal with certain practical and social problems. The professionals do the case work with disturbed personalities, and volunteers, under the guidance of the trained officials, help with the material and ancillary services. From the perspective of this author, there is no doubt that this is the pattern of the future and that it is beginning

to take shape as the basic European form.

Few empirical studies are available assessing the different probation structures. Tomic-Malic (1977) used a mail survey of the 112 persons holding the position of 'judge of the application of the penalty' (juge d'application des peines) in France. The objectives of the research were to determine the administrative and financial problems in the committee structure of probation in France and to assess the methods employed in individualizing probation.

Relying on the generalizability of a 30 percent response rate, 42 percent of the judges responding had no assistants as outlined in the structure while only 15 percent had caseloads less than fifty. Tomic-Malic concludes that the probation committees throughout France lack personnel resources. In particular, there is an insufficient number of volunteers.

While the judge of the application of the penalty may modify or change the conditions of probation, only 13 percent indicate that they do; and only 9 percent indicate that there is a complete coordination of cases between the different committee personnel. In other words, there are few instances when all members of the committee are familiar with a given case. Eighty-four percent of the judges organize regular work meetings for the committee to coordinate responsibility though nearly 50 percent meet less than three times a year. On the whole, the committee, efficiency seems to be a function of the judge and his personality permit.

Tomic-Malic also interviewed other functionaries in the system, namely, probation agents, social assistants, and volunteers. Overall, 83 percent of the judges and 85 percent of the agents and assistants felt that volunteers were useful. Young agents were the most optimistic. It is noteworthy that volunteers are considered useful because in 46 percent of the cases it is the

volunteer who actually interprets and determines the plan of action. The implications of this are not discussed, but the question must be raised regarding the qualification of volunteers making such decisions and their ability to correctly detect and report technical violations.

The committee structure, with its clear division of labor, seems to ideally combine the conflicting goals of control and assistance. The financial picture, however, indicates a lack of resources for the control function, and probation is often comprised of only volunteer, non-professional assistance.

Assessing more carefully the important role of volunteers in the international use of probation, two studies are available from Japan (Iwai et al., 1973, 1974). In the 1973 study, Iwai and colleagues attempted to look at how social changes such as urbanization, suburbanization, and migration affected the local community recruitment and attitudes of volunteers toward their work. This study, employing factor analysis on a representative sample of probation officers, found changes in the types of volunteers, their organization, and their contact with clients. As suspected, probation treatment is almost exclusively undertaken by voluntary probation officers with a limited amount of intervention by regular probation officers. On the other hand, the rationale underlying the use of local volunteers, i.e., their local prestige and impact, is supported by the conclusion that volunteers lose effectiveness if they and their clients come from different localities. In fact, conclude Iwai et al., (1973), the localism of the voluntary probation officer is diminishing in Japan today. This has increased the difficulty in making and maintaining contact with probationers. They contend that localism is central to efficient functioning of voluntary probation officers but that at present the extent of intervention by regular probation officers is not yet adequate to offset the

loss of effectiveness seen as a consequence of reduced volunteer localism.

In 1974, Iwai et al. attempted to compare the supervision of regular probation officers with that of volunteers and to determine which type of offender responded to which type of supervision. Ninety-two probationers who were for the most part under direct supervision of regular probation officers constituted an experimental group, and 114 randomly selected probationers being handled by a volunteer acted as a control. Both groups were under supervision for six months or less. Unfortunately, the groups were not sampled during the same time period (eleven years difference). Therefore, the results do not appear valid, particularly given the changing nature of the volunteer probation officer represented in their 1973 study. They assert that the regular probation officer appears to be more effective in dealing with the more serious or "hardened" offender, thus reinforcing the belief that the control function is best utilized when exercised by the professional. This conclusion, however, remains a speculation and not an empirically verified fact.

Summary

Probation services are structured to deal with the legal objectives of control and assistance. The actual structure varies from a fully professional state organization (e.g., Great Britain, India) to a centralized, but mixed system employing both professionals and volunteers (e.g., Japan, Sweden). A third structure involves a judicial committee (e.g., Belgium, France) where a clear division of labor exists between the judge, control agents, social assistants, and volunteers.

These structures represent indigenous solutions to the problem of meeting both control and assistance objectives. The impression received from reviewing

the international literature is that the objectives are being delegated to different individuals, thus reducing role conflict. Volunteers are considered important both from a financial standpoint and a theoretical one. They represent community contact, potential friends, an immediate source of help, and can positively assist in re-integrating the offender. The reliance on volunteers, furthermore is extensive and, as in France, volunteers appear to make critical decisions.

It is important to look more closely at the work of probation services in the different countries. The distribution of work, the emphasis placed on certain duties, and the perceptions of the workers will give some clue to the effects and resolution of the control/assistance conflict.

The Work of the Probation Services

Both the legal structure of probation and the organization of services are dependent upon the historical distribution of those services. In large, geographically expansive countries like Australia and India, probation is primarily a regional function (Bevan, 1972; Shah, 1973). Australia has attempted to legislate reciprocal arrangements among states for the supervision of probationers. Due to regional autonomy, this effort was without total success (Kelly and Daunton-Fear, 1975). In the Federal Republic of Germany probation remains a state function even though the national government has taken the lead in encouraging, promoting, and standardizing its operation (Elton-Mayo, 1964).

In general, most probation systems are nationally centralized with a uniform philosophy and consistent policy even though the actual application varies with each court and staff. Most systems have idealized and general expectations of probation officers. Depending upon the system responsibilities

cover, pre-conviction intervention, pre-sentence reporting, supervision and social assistance, intensive treatment, after-care (parole), and crime prevention. The emphasis on any one set of responsibilities is likely to reflect the system's commitment to either control or assistance.

Some systems, like the Japanese, define by law the objectives of probation service (Ministry of Justice, 1970). According to Chapter II, Section 3, Article 18:

> The probation office shall administer the following business:
>
> (1) To enforce probationary supervision in accordance with the provisions of the law.
>
> (2) With a view to preventing offenses, to indoctrinate and guide the public to arouse their opinion, to make efforts to impose social environments and to promote the activities of the local residents which aim at the prevention of offenses.
>
> (3) Other business which has been made to come under the function of the probation office under this law as other laws.

Within the Japanese law, also, the role and function of the probation officer and the voluntary probation officer are spelled out. Specifically, the probation officer

> ...shall be engaged in probationary supervision, examination of character and other work concerning rehabilitation of the offender and prevention of offenses on the basis of medicine, psychology, pedogogy, sociology, and other expert knowledge concerning rehabilitation. (Ministry of Justice, 1970b).

Other systems, like that in the Netherlands, rely on the constitutions of the probation organizations for examples of definitions of direction. The objective of the National Probation Association is the promotion of the well-being of members of the community in so far as this is connected with

the criminal justice system. The probation service's statutes state the aim:

> ...to attempt to influence opinions, relationships and structures in society, including the criminal justice agencies, and to develop alternatives to criminal justice reaction to behavior defined as criminal (Anonymous, 1976).

All systems seem to have the dual responsibilities of administrative and client-oriented services. Most systems view their major administrative function to be the pre-sentence report, yet such reports are not always required or requested. Even in the United Kingdom where the probation service is highly professional and organized, the Home Office had to recommend to the higher courts and magistrates courts a more frequent use of probation offices for pre-sentence reports (Davies, 1972).

Data included in pre-sentence reports are similar to that presented in the United States. It is important to state that according to a study prepared for the Council of Europe such reports appear to be used extensively in Western Europe (Elton-Mayo), especially in Great Britain (McLean, 1967). They are also used in India (Shah, 1973) and Australia (Keefe, 1972), though the extent varies by region.

Probation work also involves a variety of responsibilities in addition to the administrative obligation to provide pre-sentence reports and supervise the legal conditions established by the court. These responsibilities involve working with social and economic factors which have often produced for the offender a negative environment. Most countries, when they describe their probation system, mention the efforts in securing education, employment, housing, counselling and other services for clients. Only in Sweden have extensive studies been conducted to determine the social needs and problems facing offenders given probation.

In a review of the problems in Sweden of those sentenced to "corrections

in freedom," which includes both probationers and those given suspended sentence without supervision, the Riksrevisionsverk (1974) issued a report on the living conditions of probationers and their needs. The report assumed the need for community-based corrections; it argued for integration, especially through housing, in the community at large and against special hostels or residences. They suggested it was critical to criminal policy that such individuals receive community support. The report assumed that the client should be satisfied with his living conditions and should enter hostels or other collectives only when in need of special social services. The report asserted, without statistical data, that it was more difficult for those who had a police record to locate suitable housing and that the Department of Corrections should use its financial resources to support special housing. This was argued on the basis that only 1 percent of the offenders in the community need the special hostels. They also suggest that it is the responsibility of the Department of Corrections to guarantee that no landlord will incur a financial loss if he rents to a probationer or parolee. The Riksrevisionsverk also suggested that the Department of Corrections should try to reduce community resistance to having an offender in their neighborhood and aid the client in locating good, private housing.

Another series of studies in Sweden dealt with the educational deficiencies of offenders (probationers and those with suspended sentence) who were free to circulate within the community (Nyback, 1973; Nyback and Lindström, 1973; Stenberg, 1976; Stenäs, 1976). These studies, conducted in separate communities, used diagnostic tests to determine reading and writing skills as well as intellectual capacity. Nyback and Lindström found that between 25 and 40 percent of those studied possessed poor academic skills but were not considered

to have low I.Q.'s or to be otherwise intellectually inferior. Nyback and Lindström conclude that without specialized help, those with poor reading and writing skills would be unable to effectively compete in the society. These deficiencies were also seen to increase their probabilities of failure. The authors were unable, however, to demonstrate a difference between probation success and failure based on these educational criteria.

Using small but random samples, Stenberg (1976) and Stenäs (1976) found that approximately 67 percent of the clients had inferior educational skills, of which 39 percent could be considered seriously deficient.

These studies attempt to demonstrate the basic needs of the probation client and the direction probation services should go if they are to fulfill the social-assistance obligation. The trend in Western Europe is toward assessment of the social-adjustment needs of the clients. However, the ability to adequately meet or even recognize such needs is seen to be a function of the size of the caseload assigned to an individual officer, the presence of volunteers, the bureaucratic demands on the officer's time, the officer's own background characteristics, and the perception the officer holds of his job.

No research materials were located which attempted to ascertain the maximum caseload requirements or the effects of caseload on the probation work. Statements are found in the literature which show caseloads ranging from 50 to 60 in Great Britain (Sparks, 1970), 80 to 100 in Australia (Bevan, 1972), and to an average high of 273 in Japan (Ministry of Justice, 1970a). These caseload figures do not reflect either the importance of load to effectiveness or the value of and role played by volunteers, factors which ultimately reduce the responsibility of the probation officer. Nonetheless, Brody (1976)

concludes, after reviewing literature on sentencing, different types of offenders seem to respond to different methods of treatment and that little benefit could be expected simply by reducing the caseload of the probation officer.

A British study of caseloads suggests that the term is an inaccurate measure of probation; instead, the term 'workload' better describes the total activity of workers in the probation service (Day, 1975). Day's research was designed as a management tool to calculate staffing needs and assist in an equitable allocation of work. One hundred and thirteen officers were surveyed over a six month period. The method for selecting the sample is not known, but the officers were asked to report all activities. This study was conducted in southeast England and may not be representative of the country; attempts were made, however, to include all types of work on a weighted scale. As a survey, it rests heavily on professional opinion about the time required to achieve the professional standards. Respondents were not monitored.

The accuracy of the weighting units is not clear, but they were made by senior officers after reviewing the preliminary calculation based on the monthly reports from the sample. From the point of view of the survey's contribution, one can get an idea of the kinds of activities required in an integrated probation and after-care service such as Great Britain's. The following activities were included:

1. Probation and Supervision
2. Divorce Court and Matrimonial Proceedings
3. Money Payment Supervision Orders
4. Life Sentence and Parole
5. After-Care-Voluntary
6. Pre-release
7. Social Enquires

8. Divorce Court Enquires
9. Matrimonial Proceedings Report; Matrimonial Work
10. Guardian ad Litem; Adoption -- other enquiry
11. Access (Work with Children arising from Divorce and Magistrates Courts Orders)
12. Kindred Social Work
13. Training
14. Other Duties (e.g., staff meetings, discussion groups, casework supervision, etc.)
15. Recording
16. Traveling
17. Court Duties
18. Tea Breaks
19. Other allocations including: Means Enquiries; Local Review Committee or Parole Board; County Court Enquiry for Institutions

Day's survey indicated that the average probation officer worked 44.6 hours per week and that, in some areas, the amount of other work requirements limited time for supervision, especially in rural areas where traveling occupied, in terms of the report, "a disproportionate amount of time." Of the total time, 10 hours a week was spent on preparing reports. In reviewing work requirements, a workload of 51.4 hours was required. The report found a discrepancy of 6.8 hours between the hours actually worked and the time required to do that work.

In a survey designed only to assess the social enquiry reports, Davies and Knopf (1973) determined the work week to be just over 41 hours. These figures were from both the northwest and southeast areas of England. They found that roughly a third of all working time was spent in contact with clients and others. In Norway (Hauge, 1974) such contact was reported to be less than 25 percent of the work time. Hauge points out, however, that the fewer the contacts, the longer each tends to be.

Both the Norwegian (Hauge, 1974) and British (Davies and Knopf, 1973) studies demonstrated wide variations between officers as far as the proportionate distribution of work was concerned. When pressures increased for more reports

and more comprehensive analysis, the response varied. It seems that some officers expand their total time at work, others reduce the amount of time spent on record-keeping or home visits, while yet others reduce the amount of time spent on all other activities. The response seems to depend upon the personal working mode or discretion of the individual officer.

There is a problem of definition which makes comparison of time study surveys impossible. Davies and Knopf (1973) found that 22 percent of the time was spent on social enquiries and 23 percent of the time on record-keeping and administration, leaving 55 percent for client centered activity, though not necessarily client contact. In fact, they found that client contact occupied only 33 percent of the time. In the Federal Republic of Germany (Elton-Mayo, 1964), 83 percent of the time is reported for "routine" office work, suggesting that client-centered activities get the remaining time. Each report, therefore, must be used only in terms of its own definitions.

The need for client contact varies both in terms of client needs and overtime. The National Association of Probation Officers in Great Britian asserts that a high level of casework supervision (undefined) could be provided in a two year probation order by spending (Day, 1972):

1 hour per week on the case in the first 5 weeks
1 hour per month for the next 5 months
20 minutes per month for the next 6 months

Bagge and Bishop (1975) attempted to account for the time factor in Sweden by re-defining the categories of work by probation officers. Their categories included:

Client-centered activities: these include every form of activity or contact which is done with or for the client. It means more than direct contact with the client himself.

General support activities: these include activities whose aim is

the professional development which could be classified as education of officers and volunteers, and professional discussions.

Other activities: these include administrative responsibilities, reports, record keeping, etc.

Using only two districts in their survey and defining activities as above, Bagge and Bishop found 81 percent of the activity in one district and 90 percent in the other to be client-oriented.

Frej (1974b) attempted to look at client contact and caseload from the perspective of the clients. He directed his research in Sweden toward the number of clients assisted by probation officers rather than the amount or proportion of time spent on any set of activities. The study is important since it attempts to single out probationers who need social assistance and the type of support they need. In this study, only the activity of professional probation officers was studied.

Of the clients in the two districts studied by Frej (1974b), 38 to 39 percent needed practical help in securing work or educational training. This finding is consistent with the Nybäck and Lindström (1973), Steinberg (1976) and Stenäs (1976) studies reporting a lack of educational skills in about a third of the cases. More people, however, needed economic assistance and help in general living than help securing housing or work. Nearly one-half of the clients in one district needed financial help.

It is difficult to separate out of either the British or Swedish studies those sentenced to probation from those conditionally released from prison since probation officers in both countries have responsibility for both. Nonetheless, if the Swedish study (Frej, 1974b) is indicative, over half of the clients need some type of practical economic assistance or personal adjustment assistance (stemming from alcohol problems), and legal assistance

(needed because of probationary or statutory violations).

The study of probation officer time is beset by problems of definition, legal responsibility, job performance expectations, client characteristics, and social service or administrative orientation. None of the available studies really does any more than scratch the surface of these complex issues. Each conclusion must be viewed in terms of the basic values and expectations one has toward probation and its goals.

The general international thrust of probation is toward client-centered and social help activities (Hauge, 1969), even though social demands for law and order and more severe responses to criminality tend to argue for tighter supervision. While the official objectives of probation have a dualistic control/assistance element in them, and the legal structure of probation provides primarily for the supervisory function, professional workers in the area tend to view their role more in terms of assistance.

The orientation of probation officers is due partly to the qualifications for the job. Although there appear to be no studies on recruitment or training, there does seem to be some consensus in the international literature that the professional worker should be trained in social work. Such training tends to be more client-centered.

Hauge's (1968) study of institutional dilemmas in probation and parole demonstrates a trend in the thinking of probation officers, at least those from Northern Europe. However limited this study may be because it was based on official probation officers in Oslo, the findings are instructive. Hauge indicates that probation officers view themselves as having three main tasks which they tended to prioritize in the following way:

1. To exert remedial influence on the probationer in order to change

attitudes, motives, etc.

2. To render assistance in order to improve material circumstances.

3. To supervise the probationer in order to collect information on how he is doing.

Hauge found that while the probation officer views himself in terms of assistance, probationers tended to view him as part of the penal system and therefore as a symbol of control.

Voluntary probation workers also tend to view themselves as providing assistance. Frej's (1974a) study of probation officers in Sweden found that voluntary supervisors felt that supervision should take place in the spirit of treatment rather than punishment. Approximately equal numbers of supervisors considered practical assistance and personal support functions respectively to be their most important work. Only a few supervisors felt that the control function was the most important, and these tended to be males and police officers who had volunteered.

In Singapore, the approach of the Probation and after-care Service is that supervision becomes a situation for resolving problems rather than simply enforcing the conditions of the probation order (Velco, 1976). According to the Singapore report, the probation officer's task is to help the offender meet the demands of the society by:

1. Improving the unsatisfactory material environment.

2. Bringing about modifications in the attitudes of individuals and improving family functioning and relationships which may be aggravating other difficulties.

3. Attempting to establish a close bond of confidence and trust with the offender.

In France, while the tendency is toward assistance in contrast to control, the emphasis is primarily psychological rather than social. Tomic-Malic's

(1977) interviews of judges and probation officers indicate the underlying principle of individualized treatment. Sixty-five percent of the probation officers indicated their primary objective in dealing with a client was created by developing a reciprocal confidence, while 14 percent stressed their control function. Volunteers responded more strongly to the needs of probationers, yet the concept of psychological treatment (in contrast to either assistance or control) dominated their view of their role.

The French and Scandinavian attitudes represent an internal polarization within probation services which are essentially client-oriented. The traditional "assistance" approach represents a response to individual needs and can be called an individualistic relations model. This model emphasizes the individual client's problems in such a way that the social worker's responsibility is to get the client to function better in the society. Opposed to this is the social service work model which assumes that society is responsible for the position of offenders. This approach to probation holds society responsible for changing the structural conditions which precipitated the criminality in the first place rather than seeking the solution in "treatment" of the offender. In the social service work model the probation officer/social worker sees himself between the offender and the system, not as part of the judicial system. An example of this approach comes from the Netherlands where Snel (1974) argues that one of the definitions of professionalism in the probation system is a rejection of service not directed toward the client.

The expectations the society has of a probation service and the self images and goals of those who work in it are not consistent. Internationally, probation services tend to be client-centered and critical of the social conditions affecting clients. These attitudes have raised questions about

the future of probation as a system of control and the concept of criminal justice itself.

Utilization of Probation Services

Most of the international literature on probation is purely descriptive, reviewing either the history of the system or describing its structure. A few studies have attempted to describe the group of offenders to whom probation is granted. Unfortunately, they are limited to simply describing general characteristics and mean length of the probationary period. Few, if any, studies are available which assess the decision to grant or not grant probation.

Generally, the length of the probation period may range from one year (Belgium) to five (France), with an average of about three. In his questionnaire study of the attitudes of officials involved in the Courts of First Instance in Belgium, Versele (1969) found 47 percent to believe three years to be optimal. An older study in Britain (Barr and O'Leary, 1966) indicated that regions using probation for a smaller proportion of offenders tended to stipulate more one year sentences than three year sentences. Interestingly, the same study indicated that the areas where the number of offenses known to the police was high, probation was used proportionately less.

Probation tends to be granted to the younger, first time offender. Versele's study (1969-70) in Belgium attests to this. In France, 48 percent of those issued probation were under 25 (European Committee on Crime Problems, 1970; Millet, 1976). In Britain it was found that the proportion of male offenders put on probation declined as their age increased, but this was not the case for female offenders (Barr and O'Leary, 1966).

In Sweden, two empirical assessments of the characteristics of probationers

were found. Kühlhorn (1972) interviewed a randomly selected sample of males on probation and parole. This group was compared with a matched sample of non offenders in the community. Comparison of the two groups showed that probationers were more likely to be unemployed, poorly educated, and financially strapped. This assessment, however, simply reinforces the characterization of offenders in general. Those granted probation tended to be younger with fewer prior arrests or convictions.

In another study in Sweden, Bondeson (1977) looked specifically at the characteristics which distinguished between those granted suspended sentence without supervision, probation, and probation combined with a short period of incarceration. Her sample of 413 consisted of nearly equal numbers randomly selected from those sentenced to each of the three sanction groups in 1967 in the southern, metropolitan region of Malmö, Lund, and Helsingborg.

Like Kühlhorn (1972), Bondeson found that those processed by the criminal court were primarily from the lower social group. Between the three groups studied, those receiving simple suspended sentences tended to have the least personal, social, or economic problems. In this sense, those receiving probation had more problems than those receiving suspended sentence but fewer than those who received probation plus incarceration. This was statistically significant in terms of family background, academic achievement, misuse of alcohol, and prior record including juvenile and offense seriousness, though not offense type. This comprehensive study appears to indicate that probation, in contrast to simple suspended sentence, is issued in cases where social help or assistance is needed. When the offense, offender's background and prior record suggest the need for control, probation is often combined with incarceration. This finding reinforces another more limited Swedish study

by Wunderman, (1968). At other times, probation may be combined with fines, but the circumstances under which this occurs are unclear. In France, probation may be combined with restitution.

The studies of the characteristics of probationers are of limited value except for internal comparisons of judicial decision making. Likewise, there are no comparable data on the actual use of probation. Descriptive studies of probation rarely cite actual figures or percentages, but trends are often suggested. In Britain, for example, the proportion of offenders placed on probation has appeared to decline, especially for men (Barr and O'Leary, 1966). Sweden's proportion of probationers to other sanctions (excluding fines) has remained basically stable, while Kenya seems to show a very slight increase in the use of probation (Republic of Kenya, 1966, 1972). There are some countries like India (Shah, 1973), France (Tomic-Malic, 1977; Millet, 1976) and Belgium (Versele, 1967) where the utilization of probation is so variable and unequally applied that no trend is discernible.

Summary of Use

The only pattern which seems to be emerging is one related to either the increase or decrease of probation use. Several underlying variables appear to have some influence; one of which is related to the legal traditions and philosophies in a given country, another to experience with and the economics of probation. Countries with some experience in probation generally have had a legal structure which is supportive of individualized sanctioning. Also, countries using probation for longer periods such as Great Britain and Sweden have produced more research on the topic. In countries, where empirical research tends to be extensive, the use of probation tends to be on the decline. In economically developing countries with a more punitive legal

orientation and lack of the financial resources to support a probation system, probation remains an ideal goal, increasingly utilized, however, as conditions change. In these countries legal training and philosophy become more like the economically-developed countries where probation was initially established. In other words, probation use appears to be decreasing in those countries in which probation has been acceptable and economically feasible, and it appears to be increasing in those countries which formerly lacked supportive, legal traditions, as well as in those whose economy may not be able to afford such a system.

It appears that in economically poor and developing countries the function of law is retributive, the primary objective being deterrence. In such countries probation is neither available nor acceptable. With social and economic development - and influence from more developed countries - attitudes tend toward greater individualization of penalties, and sanctioning takes on a treatment orientation. Here, the use of probation is similar to the use of suspended sentences and is dependent upon particular judicial and local attitudes. Probation use is not uniformly or consistently used, making it difficult to assess its effectiveness as a sanction. In countries such as India, use within the country varies between 85 percent of the cases to practically zero (Shah, 1973).

Experience, economic development, and affluence increase the ability of the society to afford professional social work services and recruit volunteers. Under these conditions probation becomes a popular and standard sanction. In Sweden, for example, probation represented around 70 percent of all sanctions (excluding fines). In societies where the use is so pronounced, there is an increased belief in the positive effects of non custodial care and people are

placed on probation because other sentences, such as suspended sentence or fine, involve neither detention, nor the care and treatment required (Bevan, 1970). Probation is viewed as non-punitive, rehabilitative, and supportive. In this sense probation seems to fulfill a number of social functions: it maintains a controlling feature while emphasizing help and care, and it provides for supervision.

Anttila (1975) argues that inflated expectations of any given sanction are doomed to failure. No one sanction, she argues, can be effective at the same time for general deterrence, individual deterrence, and reform. As has been pointed out, probation has been viewed as fulfilling both the objectives of control and help. As the use of probation increases, the selection of clientele tends to become less discriminating, and many are granted probation who need greater control than probation can provide and thus fail; others are granted probation who could, perhaps, "succeed" without any control or supervision or who need help the system cannot actually provide. By trying to do too many things for too many clients, the probation system loses its primary effectiveness, increasing the public's mistrust of the system as well as the probation officer's cynicism.

Research on the actual effectiveness of probation will be discussed in the next section. The data come, however, from those countries where probation has been used most extensively and for the greatest number of purposes. Even though the data are incomplete, their conclusions challenge many of the assumptions of probation. In some of those countries, disillusionment has set in, and professionals have become more cynical and radicalized and have begun to challenge the system itself. The use of probation is being questioned more, courts are becoming more discriminating (Barr and O'Leary, 1966), and

alternatives to probation have taken on added attractiveness (European Committee on Crime Problems, 1976). Other factors seem to be operating as well. The general public in most of these countries is more aware than in the past of criminal justice issues and practices elsewhere. There is much more international communication and there has been an increase in the application of humanistic principles in sanctioning. Economic problems, exacerbated by inflation, have raised issues related to cost-effectiveness and economic priorities. Subsequently, probation as a sanction is under increased scrutiny.

The lesson to be learned from this is that probation, like any other sanction, is most effective when it is used for the appropriate client and is least effective - in terms of control or acceptance - when used too extensively and indiscriminately. Only in the light of the data presented in the next sections, however, can one understand the current assessment of the use of probation.

Effectiveness of the Use of Probation

The validity and legitimacy of any program can only be measured against its effectiveness. Does it work? There is little value in maintaining a policy or program, even if it is replete with logical and idealistic goals, if the outcome one seeks is not achieved. Strangely enough, probation appears to maintain its popularity and generate supporters without much, if any, comprehensive assessment. As discussed earlier, probation is justified on economic, humanitarian, and efficacious grounds, not empirical evidence.

The available studies vary in quality. Many of them are simply summaries of official statistics without analysis or interpretation. In most of the studies, the definition of success is often unclear, but is usually associated with either the completion of the probationary period without technical or

legal revocation, or the failure to be re-arrested during a given period after completion of the probation term.

Sparks (1970), in reviewing British and American literature, asserts that virtually every follow-up study of probationers has found that the majority are not reconvicted within the given period. This seems to be true also for studies outside the Anglo-American systems. Shah (1973), in India, cites a 92 to 95 percent success rate, though her figures represent only revocations in a given year. No follow-up data after the probationary term are reported. The Probation and After-care Service (1974) in Singapore cites an 88.3 percent success rate using the same completion-of-probation definition of success. When followed up one year after successful completion of probation, the Probation and Corrections Division (1974) in Hong Kong asserts a 78.6 percent success rate based on reconviction for the year studied and an "average rate of success for the last three years of 67.1 percent." In a two-year follow-up in Queensland, Australia, Bevan (1970) finds only one failure in 28, or a success rate of 96.4 percent. Davies' (1969) non-representative sample in Britain showed non-revocation of 62.7 percent during the first twelve months of the probation order. Japan, using the same completion-of-probation criteria, reports a 77.3 percent "success" (Shikita, 1974).

These studies are of limited value given the variety of definitions-of-success indicators, but there does appear to be a consistency in the success rates despite the structural differences in probation delivery.

A series of attempts have been made to discover the characteristics of probation failures. In France, Millet (1976) took a non-random sample of 50 successfully-terminated probationers and 50 probationers who had their probation revoked. Within a year after the successful completion of probation,

six percent were re-arrested. In general, however, the probationary period in France is long, 3 to 5 years, and many of the poor risks are likely to fail before completing the probationary term. In looking at the failure group, i.e., those who had completed probation but were later re-arrested, Millet (1976) found them to be over-represented by young offenders without family attachments or roots, without adequate education, usually out of work, and lastly with prior involvement in crime. Millet asserts that probation has failed to meet the re-socialization needs of some offenders.

The belief that failure is associated with poor individiaul socialization (a premise, incidentally, of the probation system in France and Belgium) is reinforced in Versele's (1969-1970) study in Belgium. He asserts that the primary characteristics of failures are poor psychological adjustment, disharmonious family relationships, and personal physical shortcomings, in that order.

Both the Millet (1976) and Versele (1969-1970) studies demonstrate the difficulty of making quantitative conclusions on qualitative data. Neither study employs rigorous methodology nor statistical analysis and both rely on nominal classifications. Nonetheless, both tend to reaffirm Davies' (1972) assertion that success or failure is more closely associated with the nature and intensity of the probationer's problems at the start of the probation sentence than with the nature of the probation itself.

Davies (1969) suggests that those with personal or emotional problems have the least chance of success on probation. Convinced that the assistance aspect of probation is crucial, Davies discovered that the problems most associated with rearrest and reconviction were inadequate family functioning (e.g., uncleanliness, lack of order and tidiness) rather than circumstances

beyond the family's control (illness or poverty). Other characteristics of failures, according to Davies (1969), were lack of family cohesiveness, unemployment, poor work record, general hostility and negativism, and strong peer influence.

The lack of stable relationships, either personal or in work, are factors also discovered by Tsuchiya et al. (1974) and Ifukube and Sugihara (1973) in Japan. Comparing random samples of those completing probation and those revoked during the same period, revocations were dominated by younger, single, unemployed males who had some prior conflict with the law (Tsuchiya et al., 1974). Probabilities of success were increased with increasing age (over 30), higher educational attainment, and relatively minor offense (Ifukube and Sugihara, 1973).

In general, then, statistical compilations of success and failure using probation completion as a criterion of success most often show the probation failure to be characterized by poor personal and social environments.

Folkard et al. (1966) attempted to look at patterns which may develop as a result of different relations between probation officer and client. The study attempted to determine if a particular type of treatment was more effective for one type of offender than for another. The study was carried out in relation to 602 probationers who completed probation in Middlesex, England in 1961. The main aspects of probation studied were the amount of contact between officers and probationers, the relative amount of office reporting and home visiting, the use of other agencies, the amount of support, i.e., anything said or done to help solve personal problems, and the degree of control exercised by the officer in regulating the client's behavior. The dependent variable, success or failure, referred to "breach of probation

or further offense, and the officer's overall assessment of the probationer's response to probation." The time element involved was simply the length of the probation order itself.

The study by Folkard et al. (1966) found that most of the cases which were defined as successful had a pre-trial report, pre-sentence report, more contacts with officers (25 or more during a one year probation order), and had received "high support", i.e., assistance in solving personal problems.

Using the information collected about the probationers, a treatment typology was constructed. This typology continued the concepts "support" and "control" (defined above) and "individual treatment" or activities focused on the individual offender and "situational treatment", or activities focused primarily on the social environment of the offender. Treatment modalities included: Individual Support, Individual Control, Situational Support, Situational Control, and combinations of these. The information was then analyzed to show the relative use and outcome of different types of treatment.

Folkard et al. found considerable difference in the relative use made of the different types of treatment. The most frequently used was what the authors called Individual Nominal Supervision, (defined above) which accounted for about one-third of the total number of cases. Situational Nominal Supervision was also used in about one-sixth of the cases. Almost one-sixth of the cases received Individual Support, and the next most frequently used type of treatment was Individual Support and Control. The least frequently used types of treatment were Situational Control, Situational Support and Control, and Individual Control.

Any comparison of success rates must be treated with caution, as some of them are based on small numbers. However, relatively high success rates

were associated with Situational Support (82%), Individual Support (84%), Situational Nominal Supervision (86%), and Individaul Nominal Supervision (85%). Relatively low success rates were associated with Situational Control (35%), Situational Support and Control (52%), Individual Control (55%), and Individual Support and Control (60%).

In general, low success rates were associated with those types of treatment which contain a high degree of control, and Situational Control had the lowest rate of all. The high success rates are associated with those types of treatment which contain a low degree of control, regardless of whether support was high or low.

Another British study attempted to look at the success of probation when combined with a financial penalty (Davies, 1970). Without indicating sampling method, records from eight probation officers in Britain were reviewed. Relying on contingency tables and X^2 tests, Davies found a consistently high failure rate for probationers who had been fined. However necessary the court felt the imposition of a fine was, it nonetheless became an additional burden for the probationer to assume. In a number of cases, the financial liability appeared to interfere with the case worker/client relationship. The financial burden became a point of contention making it difficult for the case worker to deal effectively with the client's other problems. Unfortunately, the generalizability of this study is unclear due to a lack of sufficient methodological information.

In Sweden, probation officers have responsibility for clients other than those sentenced to probation, including those released on parole from youth prisons or other institutions. In some ways, this complicates analysis of "frivårdsklienter", or clients treated in freedom. Nonetheless, three Swedish

studies have attempted to assess the effectiveness of probation.

Kühlhorn (1972) interviewed males given treatment in freedom in two non-metropolitan districts. Reviewing the criminal register after the probation order, he found only 52 percent of those given straight probation had not been arrested for or convicted of a new offense, either minor or serious, within three years after probation supervision ceased. The success rate for Kühlhorn's sample is lower than the 70 percent found in the metropolitan area of Malmö, Lund, and Helsingborg after a two-year follow-up (Hanson, 1969; Bondeson, 1977). If one considers offenses not included in the criminal register, i.e., where the sanction includes a day fine, Bondeson (1977) suggests the success rate is 59 percent for the straight probationers, closer to Kühlhorn's figure. Olsson et al. (1976), using a three-year follow-up of every tenth person given some form of probation in Sweden between 1969 and 1971, found 40 percent re-registered in the criminal register.

The variations in re-involvement measured by criminal registration reflect both time factors (years selected for study) and geographical variation (metropolitan, non-metropolitan, entire country); yet one can say that in Sweden between 40 and 50 percent of probationers "fail."

What are the characteristics of the probation failure in Sweden? Each of the three major studies attempted to look at this issue. Kühlhorn (1972) found that the probability of recidivism increased as one accumulated "handicap-points." Each of nine characteristics was related to re-involvement in crime. Considering each element additive and equal, the probability of recidivating with two handicap points was 25 percent; with three or four the percentage was 45, and with 7 to 9 it jumped up to 75. The nine items are:

1. Un-stable living conditions

2. Unemployed
3. Poor education (less than 7 years)
4. No occupational training
5. Raised in incomplete family (single parent, relative, etc.)
6. Registered as misusing alcohol
7. Registered as having psychological problems
8. Registered as having contact with Child Welfare Board
9. Prior registration in criminal register

Olsson, Bagge, and Bishop (1976) reviewed recidivism rates and developed a simple typology of risk group based on age and prior record. They also followed up the sample after three years and found those most likely to recidivate (48%) to be under 20 with one or more convictions (High Risk). The least likely probationer to recidivate (10%) is over thirty with no known prior offense (Low Risk). If two groups were statistically devised, the lowest recidivist group would be over 30 regardless of prior record or 21 to 29 with no prior record. Of the recidivists, half of them are re-involved within six months and three fourths recidivate within one year.

Olsson et al. (1976) also wanted to determine the relative effectiveness of probation in combination with other sanctions, namely, fines and incarceration. They found, as did Bondeson (1977), that recidivism is greatest when probation is combined with incarceration. Viewing the problem of recidivism from the perspective of "risk groups," Olsson et al. assert that recidivism is highest in the low risk group if there is any prior record and is lowest in the high risk group when probation is combined with fines.

Bondeson (1977) went beyond the general statistical grouping and percentage differences by developing a prediction instrument, creating risk groups

based on standard scores, and then through multivariate techniques determining within and between group variances. Simply, the technique is methodologically and statistically sound. The prediction instrument was developed on thirty six items and six sub-indices, including home and child rearing experiences, individual intellectual and social adjustment, prior juvenile problems and contacts with the Child Welfare Board, current social and medical problems, current occupational and economic position, and prior criminal experience.

Developing nine different risk groups based on statistical inter correlations, Bondeson then attempts to compare differences in outcome factors for suspended sentences, probation, and probation plus incarceration. Using a number of control factors such as age and offense seriousness, she could not alter the conclusion that recidivism was significantly different for the sanction types within the same risk groups. This means that given a risk score, persons sentenced to probation with incarceration have higher rates of recidivism than those sentenced to straight probation; likewise, those given suspended sentence do better than the other two groups. For the suspended sentence group, the rate of recidivism does not increase as the risk category increases. She concludes that suspended sentence could be used not only for those with good prognosis (low risk) but with poor prognosis as well. It is not clear if the prediction instrument upon which the risk groups are developed is actually measuring what Bondeson argues it does. The biggest difference in recidivism was between those given probation and those given probation with incarceration. She argued that there were no problems with the instrument and could find no variables, even those not in the instrument, which could explain the difference.

Bondeson's empirical findings support earlier assertions that penal

sanctions in freedom are more effective than incarceration, and that among the non-custodial sanctions, suspended sentence and fines were superior to probation or short-term incarceration (Borjeson, 1966: Home Office, 1964).

The differences between custodial and non-custodial treatment have been discussed in terms of the perceived effects of labeling, prisonization, etc. Non-custodial treatment was considered to avoid these negative effects. Anttila (1975) reports a study in Finland in 1972 that clearly showed that controlling the degree of supervision had no impact on recidivism. Consequently, she recommended that mandatory supervision be abolished.

Less understood is the theoretical explanation of the differences Bondeson found between suspended sentence and probation. Theoretically, probation is to provide supervision, help, and assistance. What, then, would explain the higher recidivism of the probation group, especially when the risk factor is controlled? Davies (1972) found adjustment and successful completion of probation more closely associated with the nature and intensity of the probationers' problems at the start of probation than with any treatment or assistance during supervision. Bondeson, however, attempts to account for personal problems in developing her risk groups and still finds a difference in recidivism between suspended sentence and probation.

Unfortunately, Bondeson (1977) concentrates her efforts on explaining the differences between straight probation and probation combined with incarceration -- factors which are generally associated with the negative effects of incarceration -- and not on the intriguing difference between suspended sentence and probation.

Summary of Effectiveness

From the materials reviewed, arguments generally support the use of

non-custodial sanctions. Most studies have demonstrated positive and at the same time impressive results of probation. In considering the Swedish data which show somewhat lower success rates, it must be remembered that those studies involved two and three year follow-up investigations and that Swedish statistics are considered by many to be extremely accurate. The success rates, however, must be considered in terms of the clientele sentenced to probation (Barr and O'Leary, 1966) and the conclusion of Sparks (1970) that a substantial proportion of offenders now placed on probation succeed even though they receive only nominal supervision and "treatment." Bevan (1970), in Australia, suggests that it is generally acknowledged that 80 percent of first offenders tend not to repeat a crime regardless of the sentence imposed. Sparks (1970) suggests, therefore, that since probation succeeds even for those who receive nominal supervision, the majority might succeed with other sanctions not involving supervision such as fines, warnings, or simply suspended sentences.

Bondeson's (1977) Swedish findings are sobering when she concludes that controlling for risk factor, supervised probation has higher recidivism than non-supervision. This requires serious reconsideration of the actual function of probation in contrast to its idealized objectives.

In summary, international data on the effectiveness of probation first suggests that probation is more successful than incarceration and it could be used more extensively without any increase in subsequent rates of recidivism. Second, probationers do not appear to need intensive supervision. What probationers do appear to need most, however, is social assistance involving education, vocational training, housing, etc. Third, there appear to be some aspects of the probation sanction itself which increase recidivism

compared with those granted suspended sentence. There are no explanations for the difference between probation and suspended sentence, and researchers need to make special efforts to locate and analyze the difference. The biggest gap in knowledge lies in understanding to what degree success of probation is due to the provision of social assistance and to what degree it is due to the casework and other treatment techniques allegedly provided by many probation services.

It is believed that given the variety of definitions of success, the terms of the test period -- completion of probation or follow-up -- and the lack of common statistical collection procedures, individual studies cannot be compared. However, the trend does appear clear; the less supervision, control, and isolation of offenders, the "better" the outcome.

Special and Innovative Modes of Probation

Despite the conflict which emerges as a result of the assistance -- control dualism in probation, member states of the Council of Europe seem committed to some form of non-custodial response to crime. According to a recent report, if the probation method is to realize its full potential as a non-custodial measure, considerable expansion and modification will be required (European Committee on Crime Problems, 1976).

Some thinking today suggests that the needs of offenders cannot be met through the legal process and that these needs should be met not by a supervisory service designed especially for offenders, but by the general social welfare services. The Council suggests that such an approach may be the pattern in the future; however, in the short term, they believe it is still necessary to have specialized services with coordination with other community resources (European Committee on Crime Problems, 1976).

The Council believes it is important that the probation service draw on the wider resources of the community, both in order to supplement its own resources but, more importantly, because the ultimate object of re-integrating the offender into the community is achieved only when he is not isolated from using community services provided for the public as a whole. In the future development of probation, its rehabilitative role in regard to bridging the gap to community resources in general will become of increasing significance. Of importance in this respect are the rehabilitation councils as at present exist in Sweden and the Netherlands (de Smit, 1976). These councils seem to offer an organizational structure for the gradual integration of probation work into the community services at large. De Smit (1976) relates that the rehabilitation councils originated in the Netherlands shortly after World War II. At that time the Ministry of Justice considered it necessary to establish in each court district of the country a council, with the specific purpose to coordinate the activities of the private rehabilitation agencies. When one looks at the present-day function of the rehabilitation councils in the Netherlands, it can be seen that serving as a coordination point between the criminal justice apparatus and the private rehabilitation agencies on the local or regional level is still the most important. However, the scope of the rehabilitation councils has been enlarged to accommodate the view now prevailing that a bridge has to be created between the criminal justice system and the population as a whole. Large social welfare bureaucracies such as social and health service, labor exchange, and housing bureaus regulate vital areas in the existence of every individual's life. It is especially in these areas of assistance, finance, work, medical care, and accommodation that the offender encounters serious difficulties.

The rehabilitation councils in the Netherlands consist of twelve appointed members. The members serve a four-year term and can be reappointed for another term. The twelve members can be divided into three groups of four (de Smit, 1976):

> The first group consists of four officials of the criminal justice system: a judge, a public prosecutor, a prison administrator, and the district psychiatrist.
>
> The second group consists of four representatives of rehabilitation agencies. The agencies themselves may propose a candidate for office in the council. Often a senior staff member is selected.
>
> The third group consists of officials from various areas of community life, as, for example, the director of the labor exchange, a professor of criminal law, a police official, the director of the municipal mental health service. It is self-evident that in this group the community at large may find its representation.

The rehabilitation councils in the Netherlands are thought at present to fulfill an important role in the development of alternatives to imprisonment. The rationale is that "offender-integration" will have to be developed <u>with</u> the community, not only on a central level of government, but also on the local or regional level.

Since the general trend is to increase the use of probation and widen the range of offenders who are supervised, new techniques of assistance and control are being explored. In Britain, an attempt was made to apply the Jesness Inventory, which claims to measure in an "Asocial Index" a generalized tendency to behave in ways which transgress established rules. The Jesness Inventory also provides scales reflecting ten other personality characteristics (Davies, 1976). The objective of using the scale was to isolate the point of stress in the offender's social environment and assess the probationer's personality as it may be related to environmental factors.

The study population of 507 was comprised of all male probationers (aged

17 to 20) in eight probation districts in England over a nine and a half month period beginning October 1, 1964. Approximately 10 percent of the original population failed to complete the inventory. Davies (1967) concludes that the Inventory assisted the officer's relationship with the probationer, yet the method and degree of application is not clear. British probationers differed on each scale from the original sample in the United States and a more delinquent Borstal group in England. Within a given country, the Inventory may assist the worker, but the differences found between the U.S. and Britain cast doubt on its usefulness as a comparative instrument.

In an attempt to develop the concept of differential supervision, both Sweden and Britain have conducted experiments where selected offenders have been given intensive supervision. The British experiment, IMPACT (Intensive Matched Probation and After-Care Treatment), attempted to first develop a typology of offenders and treatment and a technique for evaluating treatment (Folkard et al., 1974). In four probation and after-care districts, males over 17 who had been placed on probation were randomly assigned to either an experimental or control group. The selection criterion for random assignment varied by district, but the intention was to study the effects of intensive supervision on "high risk" offenders, typologized as those with several previous convictions.

Probation officers in the experimental group were given reduced case loads (approximately 20) and relieved of other duties such as pre-sentence reports or court attendance. Their goal was to provide "intensive situational" treatment and assistance to the client. Control group officers continued "normal" probation services.

Within the experimental group, response modalities varied according to

the degree of "treatment" and "control." The amount of support and control was measured by ratings (undefined) on the research forms. Treatment was defined as "individual" when one-to-one discussions in an interview setting were used and "situational" when applied in the client's own environment, concentrating on practical economic and social assistance.

The reliability of the IMPACT study must be viewed in terms of how well it meets basic scientific requirements for evaluation studies. The Final Report (Folkard et al., 1976) indicates how the IMPACT study meets the seven criteria thought to be the minimum necessary as a test of effectiveness of any research concerned with evaluating penal measures (Logan, 1972). According to Folkard et al. (1976):

1. There must be an adequate definition of the program or set of techniques whose effectiveness is being tested. The IMPACT emphasis on situational treatment attempted to specify the content of experimental treatment in sufficient detail for operational requirements.

2. The technique must be capable of routinization. IMPACT was set up in four separate probation areas to assess its applicability under differing circumstances, and adapted to take account of differences in local organization.

3. There must be some division, preferably random, of a given population of offenders into treatment and control groups, with the two groups differing as little as possible with respect to the characteristics of the subjects and their basis of selection. IMPACT cases were randomly allocated to experimental and control groups, and subsequent comparisons showed they were closely matched on most variables.

4. There must be some evidence that the treatment group is in fact receiving treatment as defined, but that the control group is not. Evidence to be produced in Chapter 2 shows that experimental cases received more contacts than the controls and specifically more visits outside the probation office; and experimental officers made more contacts with relatives and friends of clients and used ancillaries more frequently.

5. There should be some "before-and-after" measurement of the

behavior that is sought to be changed, and a comparison made between the two measures. This measurement must be made for both the treatment and control groups. Information on previous convictions and reconvictions was obtained for both experimentals and controls.

6. There must be a definition of "success" and "failure" that is sufficiently operational to provide a valid, reliable measurement for determining the outcome of treatment. The main criterion was whether or not an offender was reconvicted for a Standard List offense within one year of being placed on probation. Other criteria related to situational improvement were also used, but, as discussed on page 16, measures of these may be lacking in validity and reliability.

7. There should be some follow-up or delayed measurement in the community for both treatment and control groups. Probation is, of course, treatment in the community, and all cases have been follwed up in terms of one-year reconviction rates.

The IMPACT study showed that between 17 and 40 percent of the experimental cases apparently received no extra help as a result of the program, while for those who received the extra treatment, it was most frequently marriage and family assistance or counseling. A follow-up in all cases was conducted after at least a year from the date the probation order was issued (not the date of completion). The follow-up shows that in terms of subsequent convictions, no difference could be found between the experimental and control groups. Folkard et al. (1976) states, "It must be concluded that there was no solid evidence found to support the claim that experimental treatment produced more beneficial results than control treatment." They go on to state:

> The type of offender with moderate or high criminal tendencies and average or few personal problems did significantly worse (in terms of one year reconviction rates) under intensive situational treatment than under normal probation supervision. There was a suggestion that the type of offender with low criminal tendencies and many personal problems has a more successful outcome under the experimental treatment, although this was based on a relatively small number of cases and was not statistically significant.

The implication is that probation service functions better when social

assistance needs are being met and less effectively when there are few assistance needs and officers assume a greater control role.

The Swedish research in Sundsvall was built upon a premise similar to the one in England, namely, that increased resources would improve probation effectiveness. Kühlhorn (1975) reports that a pre-study of probationer and probation officer attitudes, needs, etc., indicated a dominance of concern with client's social needs by both groups. Probationers were often unemployed, had large debts, and many had alcohol problems. The Sundsvall project, then, attempted to determine the effect of intensive assistance on probationers and those released from incarceration -- a project which complicates the results since both groups are included.

The Swedish project cannot be considered an experiment in the same sense as the British IMPACT study since clients were not randomly assigned to experimental or control groups. Increasing the resources in Sundsvall included more than simply reducing case load. According to Kühlhorn (1975), it involved:

1. An increase of the treatment personnel by three times (from 3 to 9 persons).
2. An increase in office staff (from one to four persons).
3. Establishment of a social medicine clinic with part-time psychiatrist, psychologist, and nurse.
4. Establishment of a probation hostel with 20 places where probationers can stay while resolving housing problems.
5. Establishment of halfway house for 20 to cover after-care needs.
6. A person in the labor exchange to deal specifically with employment problems for clients. (For a report on this, see Kühlhorn, 1973.)

In addition, emphasis was placed on client-supervisor relations in such a way as to limit supervision to three clients. [Note: Sweden uses volunteer supervisors, and the client had the opportunity to choose his supervisor.]

Data from Sundsvall do not involve statistical analysis or differences in success rates since the project reports are not due until 1978; also, since its implementation, political and social changes have occurred in the Department of Corrections and Ministry of Justice which have affected its operation.

Kühlhorn does provide a very complete preliminary analysis of the project. Above all, he suggests that increasing the resources in such a manner as they did in Sundsvall can create a false expectation of accomplishment since one can develop a stake in "symbols" such as education, more social welfare assistants, psychologists, or hostels instead of measures designed to deal with the root causes of crime. In fact, he argues, the symbols appear equally applicable to both the projects and the trend in probation services in general.

The Sundsvall project suggests there may be an overly optimistic belief that increasing probation personnel has positive effects for the client. Instead of increased personnel, better classification which matches clients' needs with supervisor ability is seen to be needed. Kühlhorn proposes three types of supervision:

1. Normal supervision: The aim here is to provide a weak or non-severe type of supervision where interpersonal relations are friendly. Such supervision is best handled by volunteers.
2. Preventive supervision: The aim here is to have a close and frequent contact between client and supervisor. It is important that the supervisor have a close social contact with the client, e.g., co-worker, job foreman, etc. The supervisor is to deal

with small, but important immediate problems.

3. Intensive supervision: The aim here is for intensive contact between client and supervisor who provides help with economic and social problems. The requires improving the client's social milieu. Such supervision should be done by professionals.

Overall, he suggests, 66 percent of the clients could be handled by the first two types of supervision. Selection could easily be based on criminal career.

Impressions from the Sundsvall project suggest that increasing the resources does not necessarily improve outcome. The British IMPACT study suggests the same thing: it is not the number of resources, but the type of contact which is most important. Kuhlhorn believes that the same results could be achieved with a fraction of the personnel and that more people currently incarcerated could be placed on probation provided offenders were classified according to the type of supervision needed.

Another technique in probation is group probation, which differs from the traditional pattern of a single, client-supervisor relationship by making use of the offender's interaction with fellow offenders in a group situation. Experiments of this type have been most common in the Federal Republic of Germany and Britain (European Committee on Crime Problems, 1974).

Group work is limited even though it was first used systematically for British youth in 1926. After World War II, and the emergence of group therapy, such techniques were considered applicable to probationers. Its use in the probation service in England appears to have the dual origin of the traditional interest of probation officers in activity groups and the growing interest in discussion groups in fields allied to probation (Barr, 1966). It is estimated that only about 5 percent of the British probation officers have

experience in group work.

No data are available on either the use or effectiveness of employing group probation techniques compared to using the single client/officer approach. Group probation has generally been used in situations where probationers have had common problems such as being inarticulare or shy. Barr (1966) reviewed the use of groups in Britain and found them to be small in size (around eight) and used for discussion groups for clarification, insight, and interpretation of personal problems. Such groups were seen to be successful for females in Singapore since many had the common problems of family relationships, guilt, shame, and a sense of personal inadequacy (Challiah, 1976).

According to Challiah (1976), the group allowed probationers to test relationships and make friends, recognize that they were not alone in their experiences and feelings, explore mutual concerns and difficulties, and offer help to someone else as a way of viewing themselves more positively. Barr (1966) suggests that persons with severe personal problems should not be put into such groups since they need more individualized attention.

Group work was felt to be specialized and required special training for the officer involved; few officers surveyed felt that there was any time saved by meeting with a group. Since most groups fail to continue over one year, group treatment must be preceded and succeeded by individual work (Barr, 1966).

Other new techniques may demand training facilities to be placed at the disposal of the probation service in a way that has not been common in the past. Many offenders, in particular those who suffer from educational shortcomings lack work or other social disadvantages, are likely to continue in crime if the conditions are not changed.

These needs can be met through the general services of the community. But there may be an advantage in meeting them directly through the probation system and possibly making use of them a condition of probation. This approach is being tested out in Britain in a number of experimental day training centers, which selected offenders attend for full-time (but non-residential) training for a period of up to sixty days. The experimental centers are testing, in their different ways, various methods of imparting social skills and broadening the experience of offenders sent to them. The program includes counselling by probation officers with minimal case loads; other instruction is provided partly by probation officers and partly by employing other staff or using outside resources. Provisions were made for training centers in Britain in the Criminal Justice Act of 1972. Assessment of suitability for training was generally made during pre-sentence reports or directly by the court.

The Home Office Research Unit reviewed the early progress of the training centers through November 1975. It was found that the course content at the centers could be divided into three types of activities: therapeutic, practical, and remedial (Payne, 1977).

Therapeutic activities were expressive and analytical. The former included art and craftwork, role playing, music appreciation, therapy, and discussion groups. The discussion groups aimed at examining self-motivations and individual problems.

Practical tasks included training in woodwork, electrical repair, gardening, wrought-iron work, decorating, masonry, upholstery, and cooking. Activities were geared toward using these skills in community service.

Remedial activities were primarily concerned with remedial education.

Nearly all probation officers at the centers and those dealing with ex-trainees felt the clients had benefited, although no empirical data are available.

Other kinds of day-center provisions -- on a small scale -- also exist. Some of these centers are simply an extension of conventional probation office accommodations and thus provide some of the facilities of a recreational club. The objective seems to be to provide creative and recreational opportunities for offenders who fail to seek and use the ordinary community resources, and the creation of informal settings for individual counseling and group services of various kinds.

Another resource used as a supplement to probation is the use of residential hostels. Many offenders whom the courts might otherwise commit to custody can be dealt with on probation by providing a stable environment and a measure of social support and control. Here, as in other aspects of non-custodial policy, a choice lies between using all purpose community resources and making specific provisions within the probation department to meet the needs of the courts and offenders. The hostel provides both the community setting and social control. Residence in a hostel or other facility for a stipulated period becomes a condition of probation. Experience in Britain (where there have been probation hostels for adolescents for many years but only recently for adult offenders) suggests that the courts are willing to use hostels as a substitute for imprisonment when sentencing recidivists.

Most probation officers had experienced problems when trying to place a client in an adult hostel (Andrews, 1977). Interviewing probation officers

who had contact with adult hostels, Andrews (1977) found the main problem of hostels to be distance from the probationer's home. Such distances decrease contact with family, friends, and employment relations. Hostel placement was also considered to cause problems for the probation officer by disrupting the continuity of treatment and giving rise to problems similar to those faced when an offender is released from prison.

The advantage, however, of hostel residence, as compared with custody, is that while removing the offender from his normal environment, it leaves him, to a large extent, within the community. It assumes that hostel life should be as "normal" as possible. Not only should the resident find ordinary work outside the hostel, but he should also have free time to use the facilities of the wider community, and the hostel itself should build up links with the local community in which it is situated (European Committee on Crime Problems, 1976).

The results of the halfway houses or hostels require serious empirical assessment (recent materials are available in the United States). Kühlhorn (1975), in assessing the Sundsvall project in Sweden, states that it is cheaper and more humanitarian to provide a greater degree of control over lawbreakers in freedom than to move the offenders one step closer to freedom. One must be cautious when discussing hostels not to forget that they are a variety of custodial as well as non-custodial treatment.

Though the hostel is the most familiar pattern of community residential provision for offenders, there are other models. As the European Committee on Crime Problems describes them (1976):

> The element of control implicit in the hostel is not suitable for all offenders. Facilities such as the "living communities" (Wohngemeinschaften) in the Federal Republic of

> Germany stress the concept of a communal life shared by offenders in which the individual derives support from the group. Such communities, consisting of four to eight persons, most of them under the age of 25, share a flat or house rented for this purpose by a private association. The living communities do not always include probationers. They afford an opportunity for mixing offenders with non-offenders. Students participate in many of the communities. Rent and maintenance are usually paid by the youth or welfare agencies or, in the case of therapeutic groups of former drug addicts, by the health services. The communities tend to perform as informal groups with a view to facilitating integration into the neighborhood which is, nevertheless, difficult. Formal links between the living communities and the probation service are, as a rule, avoided. Probation officers play, however, a role in establishing living communities. They help and counsel, especially if their clients live in a community. Full integration of a professional social worker into the living community was tested when the communities came into existence in 1968. Most of the communities have abandoned this concept, which proved to be a strain on the social worker as well as on the interactions within the group. Regular counseling by a skilled person and the availability of the counselor at any time are, however, regarded as necessary. An increasing emphasis on professional social work reflects the experience of the living communities. One of these experiences is the instability of many communities, especially the small ones. In the drug field there is now a tendency towards larger therapeutic living communities, while for the rest the concept of small family-size units continues to prevail. In the light of these experiences, living communities are neither overall alternatives to institutions nor suitable for all probationers. In an appropriate context, however, they afford new opportunities for social training and reintegration.

There has been some recognition of specialized programs of probation for probationers with serious mental problems or who also have problems with substance abuse such as drugs or alcohol. In 1972, Sweden established the Probation Treatment Center as a separate sociomedical organization as part of the probation service. The center was established to deal especially with mentally disturbed clients or those with serious problems concerning the misuse of alcohol or narcotics. Clients may be referred from districts outside of Stockholm (Warren, 1976). According to Warren (1976), the following services are provided by the Stockholm Probation Treatment Center:

> A social/medical activity with a doctor's reception for those clients directed by the courts to maintain contact with a psychiatrist; a placement activity for clients to be placed in homes, therapeutic communities or collectives out in the country; a case work focused on clients who do not have a direct and immediate need of medical contact; psychological activities with family therapy, and both individual and group counseling; a hostel with 12 places available; leisure activities which are primarily intended for hostel guests during the evenings and weekends.

Warren (1976) reviewed the 336 clients registered with the center during its first year of operation. Information gathered included legal and socio-demographic characteristics of the clients at registration at the center, and again six months later. The basic findings of this survey are that a disproportionate number of clients are from the lower classes with a poor family and social background, especially in terms of education. Almost all had some prior contact with criminal authorities or social assistance agencies.

The study did find some improvement in general social functioning, including a slight decrease in drug or alcohol misuse (5.4%) and improved adjustment to work after registration. Of those studied, 43.7 percent were reconvicted of another crime (generally property) within a year after release. It is important, however, that Warren was unable to assess the effect of the special treatment measures. As he suggests, "It seemed rather that a high frequency of contact was a more important factor than the specific treatment measure used."

In Singapore a special unit to deal with narcotic offenders was established in 1970, but consisted of only two probation officers with a case load of 60 each (Probation and After-care Service, 1974). Most non-opiate drug offenders are given regular probation in Singapore. Following up a group of drug users placed on probation in 1972 and 1974, forty-five

percent had recidivated. It is not known from the report, however, how the group was selected. No studies are available to assess the special unit.

Summary

The importance of these innovative programs lies in their underlying assumptions. They may be duplicated in structure, e.g., establish hostels or day-training centers, but their success depends upon meeting the needs of the offender. The studies reported here generally concur that probation success is most likely to occur when the social and personal needs of the offender are met and the control function of the probation officer is minimized.

Innovative programs attempt to improve the delivery of social assistance. Day-training centers make the delivery of educational and employment skills easier; group counseling improves the chances of discovering client needs; and hostels and living communities provide peer group control and opportunities for social adjustment.

The premise that is important is that social assistance is best provided within the community and not as a separate or special service of the probation department. In this sense, the Rehabilitation Councils of the Netherlands are successful because they coordinate local support and community involvement. Likewise, the stress on localism and volunteers in Japan reaffirm the importance of the community itself.

Unless a system recognizes the need for social-service agencies to meet client needs, importing or copying a given structure is doomed to failure. Problems faced by probationers are basically problems of living, and these cannot be met simply by adopting innovative programs. They can only be met by attacking the root causes of crime. Thus, any program can work in another

society provided that the society is willing to provide for social integration and collective responsibility and try to overcome the social and personal disadvantages of its offender population.

Summary

Probation as a sanction emerged out of the ideological and philosophical debate regarding the function and objectives of punishment. Probation was most likely to appear where legal structures evolved under the influence of positivism which emphasized the individual actor in contrast to punishment was inadequate as a deterrent since the cause of crime was seen to be related to individual or social factors, and therefore the application of punishment was not a suitable method of preventing recidivism.

Probation developed with a dual function - social control and individual help or treatment - and its organization and delivery varies according to the emphasis by the courts at any given time. While the specificity of probation laws varies, there is the common general unwillingness of legislation to interfere in the sentencing discretion of judges. The application of probation will have less to do with legislative wording than judicial philosophy.

Probation legislation reflects both control and assistance philosophies; probation utilization reflects judicial attitudes; and probation application becomes a function of the structure and orientation of the probation service. Legislation is generally vague, giving wide latitude to the judiciary which in turn directs the probation service to carry out its objectives. The law has tried to incorporate both control and assistance philosophies; the judiciary tends to stress either depending upon the judge's characteristics, and probation services have generally tended to assume the treatment or assistance role.

Probation services are structured in a variety of ways: as an arm

of the court, as an independent state agency, as a private assistance group, and as a volunteer service. Regardless of the structure, the professional and recently established services tend to be more control oriented, while volunteer, private services, or established systems tend to be oriented more toward social assistance. The general international thrust, however, is to greater client-centered acticity. Professional probation officers are receiving more social work training which is more client-oriented, and these officers conceive of themselves in assistance terms. Since the probation agents take on the responsibility for both pre-sentence investigation and supervision, it seems appropriate to question whether or not the same authority can serve both the court and the client and make decisions affecting both control and assistance.

The client-centered activity, particularly in Europe, has developed an internal polarization and radicalization in terms of the delivery of assistance. The traditional "assistance" approach assumes criminality to be a function of individual weakness and emphasizes the individual client's problems in such a way that the social worker's responsibility is to get <u>him</u> to function better in the society. Opposed to this is the approach which assumes the <u>society</u> is responsible for crime. This approach sees the probation officer's responsibility to lie in changing the structural conditions within the society which precipitated the criminality rather than "treat" the weaknesses of the offender. In this approach, the probation officer/social worker sees himself <u>between</u> the offender and the system, not as part of the judicial system. The problems of most probationers are problems of living, and these require wider political changes. The availability of jobs, housing, and social opportunities

are outside the influence of either the probationer or his supervisor. Current criminological literature stresses the need to recognize that failure in the society may not always be due to individual weakness.

In terms of the use of probation, probation tends to be granted to the younger, first-time offender for a period ranging from one to five years. The studies of the characteristics of probationers are of limited value except to provide information on judicial decision making. Likewise, there are no comparable statistics on the actual use of probation. Descriptive studies rarely cite actual figures or even percentages.

The only pattern is one of varying use, with some countries increasing the use of probation and some decreasing it. There are a few underlying variables which seem to have some influence in establishing these patterns, namely, the legal traditions and philosophy of the particular country, its past experience with probation, and, lastly, the economic conditions under which probation is to be administered. Countries with some experience in probation have generally had a legal structure supportive of individualized sanctioning. Also, countries using probation for longer periods of time have produced more research. In these countries, the use of probation tends to be on the decrease. In economically developing countries with a more punitive legal orientation and lack of the financial resources to support a probation system, probation remains an ideal goal, increasingly utilized, however, as conditions change. In these countries legal training and philosophy become more like the economically-developed countries where probation was initially established.

The international trend in probation tends to be in both directions simultaneously. The pattern would seem to be as follows. In economically

poor and developing countries, the function of law is retributive, the primary function being one of deterrence. In such countries probation is neither available nor acceptable. With social and economic development, attitudes tend toward greater individualization of penalties, and sanctioning takes on a treatment orientation. Here, the use of probation is similar to the use of suspended sentences and is dependent upon individual judicial and local attitudes. Probation use is not uniformly or consistently used, making it difficult to assess its effectiveness as a sanction.

With experience and economic development, the ability of the society to afford professional social work services increases and probation becomes a popular and standard sanction. In these societies there is an increasing belief in the positive effects of non-custodial care. Probation is viewed as non-punitive, rehabilitative, and supportive. In this sense probation seems to fulfill several social functions: maintains a societal control while at the same time providing individualized help and care.

However, with inflated expectations for probation comes disillusionment. No sanction can be simultaneously effective for general deterrence, individual deterrence, and reform. Probation comes to be seen as insufficient and professionals in the area become cynical and redicalized, challenging the system itself. The use of probation therefore begins to decline, courts become more discriminating, and alternatives to probation take on added importance.

Most people are concerned with the actual effectiveness of probation. A number of surveys have been conducted, but few good empirical assessments have followed. The "success" rates tend to range between 50 and 90 percent.

Countries like Sweden tend to report lower success rates but the methodology of their research and the accuracy of their statistics tend to make them more reliable.

In general, the most comprehensive research data come from Britain and Sweden and tend to suggest that the effect of probation itself is unknown. Certainly, those who are placed on probation are more likely to succeed than those given other sanctions, but the extent to which one can attribute this to probation itself is not clear. Since some data indicate that most first offenders do not repeat a crime regardless of the sanction and that most probationers succeed (even those who receive nominal supervision), the majority might succeed with the sanctions like fines, warnings, or suspended sentences which involve no supervision. There is considerable data in Sweden suggesting that given similar risk categories, probationers do less well than those given suspended sentences.

Both British and Swedish data tend to show that intensive supervision is effective only in cases requiring social assistance and when the assistance function is stressed. As some probation workers are emphasizing, these are external political problems, not offender problems, and success or failure is more contingent upon the ability of the social system to meet the needs of its population as a whole than upon anything probation supervision may do.

In summary, international data on the effectiveness of probation first suggests that probation is more successful than incarceration and that it could be used more extensively without any increase in subsequent rates of recidivism. Second, probationers do not appear to need or benefit from intensive supervision and could do just as well with nominal supervision.

What probationers appear to need most is social assistance involving education, vocational training, housing, and employment. Third, there appear to be some aspects of the probation sanction itself which increase recidivism compared with those granted suspended sentences. Researchers need to make special efforts to locate and analyze why this difference between suspended sentence and probation exists. The biggest gap in knowledge lies in understanding to what extent success on probation is due to the provision of social assistance and to what extent it is due to the casework and other treatment techniques allegedly provided by many probation services.

It is believed that given the variety of definitions of success, the terms of the test period - completion of probation or follow-up - and the reliability of statistical collection, individual studies cannot be compared. However, the trend does appear to be clear: the less supervision, control, and isolation of offenders, the "better" the outcome.

There is, then, growing disillusionment with probation as it is currently used. Some efforts have been made, but not yet evaluated, to expand and specialize the probation service. In terms of innovation, emphasis is increasingly placed on typologizing probationers and matching needs. This procedure, utilizing demographic, legal, and personality differences should make it possible to serve more probationers with a franction of the personnel.

Other efforts include group probation, day-training centers, probation hostels, and specialized programs for substance abusers. None of these programs have been assessed satisfactorily.

III. Systems Utilizing Legal Provisions for the Suspension or Deferment of Sentence

There is a theoretical and philosophical overlap in the use of probation and suspended sentence since the objective of providing a second chance without the imposition of a penalty is characteristic of both. The use of the suspended sentence in contrast to probation has been contingent upon legal tradition. In some countries like the Netherlands, Sweden, and the Soviet Union, both sanctions are possible.

Suspended sentence is a term which actually incorporates two different legal concepts; suspension of the pronouncement of a penalty and suspension of the execution of a penalty (see Part I, pp. 5-6 above). These two provisions serve similar purposes, yet are different. Deferment of the sentence occurs after conviction and gives the courts power to defer passing sentence on an offender for a specified period of time. The object is to enable the sentencing decision to be postponed, pending some expected change or some action on the defendant's part. These conditions may be similar to conditions of probation in other countries.

Withholding of the sanction or suspension of the execution of the penalty is used in minor cases. Withholding the sanction is most likely contingent upon circumstances surrounding the act, its triviality, or the absence of any need to pass a sentence as a measure of prevention or deterrence. In some instances, the withholding of the sanction will simply involve the admonition to avoid reinvolvement in crime and may, as in the Federal Republic of Germany and Austria, include a legal reprimand under which a court may refrain from imposing a penalty where the consequences of the

offense for the offender himself are so serious that to superimpose a penalty would not appear to be appropriate.

In France, two major innovations have recently been introduced by the Act of 11 July 1975. First, it is possible for the court not to pass sentence on conviction. Second, the court can defer passing sentence for up to one year. The court is given wide discretion under the act, also being able to suspend execution of a sentence (whether or not involving imprisonment) imposed even for particularly serious offenses. The act thus continues the trend started in 1972 whereby the court is enabled to reduce sentence (imprisonment) and waive disqualifications (European Committee on Crime Problems, 1976).

In most cases, the sentence of deferment includes restrictions or conditions which must be met by the offender. However, neither the legal philosophy or legal structure require the use of professional supervision to determine if the conditions have actually been fulfilled. Part of the reason for this lies in the development of basic assumptions of the legal system itself.

Suspended sentence assumes the conditions will be met. It is an outgrowth of the gemeinschaft social structure or small, integrated system where a greater sense of collective responsibility is present. Such legal orientations assume the need for individuals to be integrated into the system, and the suspended sentence provides the opportunity to commit oneself to the common social good before more severe actions, such as imprisonment or banishment are taken. Professional supervisors are not necessary since the community as a whole has an investment in assisting in the re-education or resocialization effort.

As societies become more complex, urban and anonymous, the use of suspended sentences have given way to the perceived need for greater control by the authorities and thus probation becomes established. Probation emerged to fill the gap created when the social, collective, or group responsibility weakened and individualism and social autonomy increased. This pattern is most typified in capitalist countries. In economically developing countries, cohesive societies and socialist states, collective responsibility remains a dominant philosophy, if not a practical necessity. Here, suspended sentence can still function to meet the second chance objectives and resocialization needs without the need to maintain the more formal supervising agents.

The functioning of suspended sentences in ways similar to probation is perhaps best seen in its use and development in socialist countries.[1] While particular legal provisions and judicial criteria may vary by country, the general objectives of the criminal law revolve around public participation, individual and collective responsibility, prevention and re-education, and resocialization of the offender.

The underlying philosophy of sanctioning is social integration. This is seen to be facilitated by integrating the community work spheres. Thus, social courts or comrade courts operate at the place of work and are geared toward increasing community involvement and commitment. These social courts assume responsibility for minor offenses and are handled by lay-judge colleagues. In more serious crime handled by the local courts, the collective

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[1]Much of the following discussion is based on personal interviews with criminologists, lawyers, and officials in the Democratic Republic of Germany, Bulgaria, Hungary, Poland and the U.S.S.R. and is not based, unless otherwise stated, on published material. The author assumes all responsibility for inaccuracies.

(or work group) may be required to assume responsibility for the fulfillment of obligations imposed if a sentence is suspended.

In the Soviet Union, the system of suspended sentence is in essence suspended punishment or conditional sentence. The individual is found guilty, but the judge suspends the punishment while simultaneously imposing certain responsibilities or obligations on the offender. Application of these conditions may be supervised either by the collective - social probation, or by agents of the Ministry of Interior - state probation. As a rule, state probation handles the more serious offender. Failure to meet the obligations results in the imposition of the original penalty of incarceration.

Social probation has its historical roots in the early soviets or executive committees of local citizens. The soviet had wide rights, including the execution of control over agencies which executed punishment, including the deprivation of liberty, rendering help in resocialization and controlling punishment. They also assumed responsibilities associated with parole.

State probation developed druing the first years of Soviet power in the form of "inspectors of corrective labor." Collective labor was not a deprivation of liverty, but social labor, i.e., the requirement to work and pay part of one's wage to the state as a form of fime by installment. Under these provisions, the individual would continue to work at his same job, but be controlled by both the collective and the state.

Ideologically, social probation is seen as desirable end since it reaffirms social obligation and avoids the isolation of incarceration. Considering the circumstances of a case, the personality of the offender,

the social organization of the worker's collectives, and the place where the offender words, the court may transfer the conditionally sentenced person to these organizations for re-education and supervision (Zagorodnikov, 1974). By entrusting the worker's collective or certain persons known to the offender and utilizing the informal social control of peers, resocialization and reintegration are seen to be more likely. These supervisors may ask for a reduction of the probationary period.

In the German Democratic Republic, individuals or collectives may either approach the court or be asked by the court to assume the supervisory role. According to articles 31 and 32 of the Penal Laws of the German Democratic Republic:

> Pledges
>
> (1) Collectives of working people may undertake to pledge themselves for an offender, and to propose to the court to impose a penalty without imprisonment. In exceptional cases individual citizens, who are suitable and capable of re-educating the offender, may be allowed to pledge themselves.
>
> (2) If the court confirms in its sentence the taking over of a pledge, the collective body or the citizen proposing it are duty-bound to guarantee the re-education of the offender.
>
> (3) The obligation arising from the pledge lapses after one year. In cases of penalties imposed on probation the pledge may be extended for a longer period, but never beyond the probation period.
>
> (4) Should the sentenced person maliciously evade probation and restitution, the collective body or the citizen may apply to the court to make the offender serve the term of imprisonment originally imposed on probation.
>
> (5) Upon the application of a collective body or a citizen, the court confirms the termination of the pledge, if the conditions for the fulfillment of the obligations, which were linked with the pledge, have ceased to exist.
>
> Obligations of Enterprises, Cooperative Societies and Mass Organizations

> As soon as a penalty without imprisonment is imposed, the managers of enterprises, state organs or institutions, the chairmen of cooperative societies and mass organizations are obliged to safeguard the re-educational influence of the collective body upon the sentenced person.

The collective responsibility for the offender was formalized in the Soviet Union Penal Codes of 1959 and 1960, even though the practice predates that time. In Poland, the provision existed as early as 1932 but was more commonly used during the 1960s.

The principle of public involvement and participation is underscored by the legal provision that collectives actually assume roles granted probation officers in other systems. The success of the procedure will vary according to the quality of the groups and the relation of the individual to the group. Even for recidivists, the possibility of the individual being given social probation is contingent upon the group's position and its willingness to pledge itself to the person. This position may make the difference between probation and incarceration. Under the collective it is often hard to define who is responsible for the offender, thus defeating the purpose. A disparity often exists between rural and urban areas. Rural areas are more likely to use the collective, while in urban areas where anonymity is greater, formal probation supervision as known in other countries is more likely. Formal supervision will be extended to adults in Hungary in 1978.

The ultimate sanction is, of course, determined by the court. Such a decision is made keeping the objective of re-education and resocialization in mind. According to the Hungarian Criminal Code (Art. No. 5 of 1961), Section 34), "the aim of punishment is to protect society by applying the prejudice defined in the law, to reform the perpetrator and to restrain

the members of society from all criminal actions" (Gönczöl, 1977).

Eligibility for conditional sentence or suspended sentence depends upon three basic and interrelated criteria: dangerousness of the act to the society, dangerousness of the perpetrator, and the degree of aggravation or extenuating circumstances. The concept of social danger is inherent in all of the legislation and is a matter of judicial interpretation and discretion. Social danger must be balanced with individual personality or the individual's potential for resocialization. This is the basis of current debates. The use of suspended sentence, however, cannot be understood without the awareness of the objective of balancing the public safety with the commitment to social integration.

In the Democratic Republic of Germany, suspended sentence is limited to offenses which carry up to two years incarceration; in Hungary, to offenses with a potential incarceration between six months and one year of collective correctional work; and in the Soviet Union, it is applicable for terms from one to three years. In Greece where the system is also used, only offenses carrying a penalty of less than one year are eligible. According to the Penal Code of Hungary (Section 70(1)):

> The court may suspend execution of loss of liberty not exceeding one year or execution of a fine as main punishment, if, taking into consideration the personal circumstances of the perpetrator -- particularly his past record -- and the nature of the crime committed, the purpose of the punishment can also be realized without its execution.
>
> (2) In the presence of circumstances deserving special consideration, the Court may also suspend execution of loss of liberty of more than 1 year but not exceeding two years.
>
> (5) No reprieve can be granted if:
>
> a) a prohibition to take part in public affairs, an expulsion from certain parts of the country, or an expulsion from Hungary is being applied;

b) the perpetrator has committed the crime before the termination of execution of the loss of liberty or during probation;

c) the perpetrator has been sentenced to loss of liberty for a willful crime within 5 years preceding perpetration of the crime, unless execution of this sentence has been suspended.

Conditions attached to the suspended sentence are not necessarily the same as those attached to probation. Conditional sentences tend to keep the social objective of reintegration and education in the forefront. Most of the conditions have long historical roots and include, as in the Democratic Republic of Germany, the requirement not only to fulfill the laws, but to work and not change jobs. The value of work and the social interaction at the place of work is central to the philosophy surrounding suspended sentence. According to the Penal Code of the Democratic Republic of Germany (Article 34):

Obligation to Probation at the Place of Work

(1) The obligation to prove himself at his place of work is to re-educate the offender by the influence of the collective at the working place toward a responsible attitude to Socialist labour and his other duties.

(2) The court sentence obliges the accused not to change his previous or assigned place of word. This obligation is imposed for a definite period which must not exceed the time of probation. The sentenced person is to remain at his place of work or in the enterprise where he worked before. The enterprise has to ensure that the educational effect of probation at the place or work is safeguarded. A change of employment by the sentenced person or the termination of employment by the enterprise is not permissible, unless there are cogent reasons for it, and require the consent by the court.

Other requirements include repairing damage, using income for the family, seeking medical treatment, and performing community work. In the Soviet Union an offender may also be enlisted to do useful labor in the community as a condition of probation and be supervised by specifically assigned

state agencies (Zagoradnikov, 1974). Again, citing the Penal Code of the Democratic Republic of Germany (Article 30(3)):

> The purpose of penalties without imprisonment is to cause an offender to prove himself and to repair the damage with a view to enabling him becoming, in the future, socially adjusted. Penalties without imprisonment contribute toward developing the re-educational force of the Socialist collective bodies and mass organizations for the overcoming of violations of the law.

In Poland an offender may be required not only to meet obligations similar to the other countries, but also to apologize, to limit social contacts, and not abuse alcohol. The major condition in Poland, however, is the payment of damages. Similar obligations are also imposed in Switzerland and Greece.

Little, if any, data were available on the use of suspended sentences, but it has been estimated that in the Democratic Republic of Germany approximately 60 percent of all criminal cases are handled either by social courts or granted suspended sentence by the local courts; in Poland the figure is around 50 percent, although the number has been decreasing for social probation and increasing for officer supervision.

The situation in Poland seems to represent the trend toward greater formalization of probation and away from the more nebulous group or collective control. This may be a function of greater reliance on formal controls concomitant with increased urbanism, increases in criminality in general, or a decreased willingness of collectives to assume responsibility for the re-education of the offender. The proposed establishment of formal probation in Hungary indicates a similar trend there. The Soviet Union also reports an increase in the number of persons handled by the state probation service.

The use of suspended sentence in Socialist countries appears to be in a developmental stage. As societies change in structure, there is a greater formalization of interpersonal relationships. These relationships and mutual obligations are necessary, yet increased mobility and anonymity tend to make them less effective either as a social prophylaxis against initial involvement in crime or as an effective resocializer.

Data are also lacking regarding the effectiveness of suspended sentences as a sanction. Tauber's yet unpublished research on the effectiveness of suspended sentence in Hungary is methodologically sound and comprehensive. Randomly selecting 400 cases from district courts during 1971-72 and following up on the sample, Tauber found that of those who served sentences (about 30 percent of the sample) 70 percent were classified as successes. Of those given suspended sentences with social probation, 95 percent were considered successful. Success was measured on four dimensions: actual recidivism, subjective "intent" to be reintegrated, behavior exhibited demonstrating intent (not necessarily criminal or non-criminal), and the objective circumstances of the offender to help or hinder the psychological intent.

While all four criteria are somewhat difficult to quantify, Tauber does give an overall picture of those who actually fail while given suspended sentence. Failures may be characterized by having lower I.Q., lower educational attainment (80-85 percent of failures had less than eight years of school), were younger, lacked permanent or stable family, and had poor work performance. (Note: Unemployment itself is not a problem in Hungary.) Failures, it was found, were more likely in areas of rapid industrial development and high mobility. They were more likely to have emotional problems and poorly integrative family and work relationships, reducing the

effectiveness of informal controls as a conforming mechanism.

It should be pointed out that other studies may have been available but because of time limitations on this research they were not located. In any event, Tauber's findings are consistent with other data indicating that probation failure is most likely for the group of persons most socially and economically unprepared to participate in the social system.

IV. Implications and Trends

All societies and all systems require conformity to norms. In general, punishment or the threat of punishment is felt to function as a deterrent to engaging in those acts defined at any point as unacceptable. Yet experience has shown that no matter how severe the penality, crime continues.

For sometime now our legal tradition has spawned a philosophical debate between the belief that the agent/actor is autonomous and responsible and therefore accountable for all that he does, and the contrary view that the agent/actor is a product (and unwilling one at that) of his external circumstances. Each system continues to modify its responses to crime given its own perception of the balance between these two issues. Part of the debate, too, lies in the basic assumptions about the etiology of criminality. If crime is seen as a rational process, severe punishment and deterrence are stressed; if it is viewed as a function of external social structural determinants, radical social change is required. Most systems have adopted a stance somewhere in between.

For years, non-custodial treatment has been viewed as having greater success in the effort to achieve conformity than the isolation and stigma created by incarcertaion. Probation and suspended sentence provisions emerge in this context, strking a balance between treatment and control. But the objectives remain the same -- reinforcement of social conformity.

Various organizational structures have been discussed, revealing how each society feels the offender can best be re-educated, resocialized, or in some way integrated into the social mainstream. Such structures depend upon legal and historical conditions but may involve formal probation officers, volunteers, legal and social service committees,

the work collective, or other combinations.

There does not appear to be a significant relationship between structure and outcome. Statistics which are available internationally generally show similar trends. Regardless of organizational pattern, the majority of persons placed on probation or suspended sentence do not become reinvolved in crime.

This finding raises serious doubts about the effectiveness of organized services and intensive treatment programs. Some of the more reliable and methodologically-sound research indicates that probation itself may have a negative impact. No one, however, has even speculated as to what precisely may be the cause.

When one assesses probation failure, it is generally associated with poor social skills, lack of education or vocational training, and other economic or societal deprivation. The characteristics of probation failure have also been found to apply to recidivists who had been granted suspended sentence as well. These are, indicentally, the same characteristics of conventional crime offenders as a whole.

The use of probation and the emphasis of probation workers tend to parallel social and economic development. Probation is not used in socially cohesive or economically developing countries. For many reasons, gemeinschaft societies tend to be more cohesive and collectively oriented, reinforcing informal social control mechanisms. These mechanisms not only reduce the probability of criminal involvement, but also tend to assume a group response to and group support for the offender. The ideology in socialist countries has reinforced the sense of collective conscience, socially useful labor,

and social integration despite urban and industrial development. In both cases, formal probation supervision is perceived as unnecessary since both the supervisory and social assistance roles of the supervisor can be assumed by the group.

With economic development, urbanism, and particularly social and spatial mobility, group control and group willingness to assume control are reduced. Under these circumstances, probation begins to emerge as a more professional control service, recruiting private social assistance groups, volunteers, and professional social workers and counselors. Its use increases and more persons are placed in probation as crime also tends to increase under the same set of circumstances.

As probation services increase, more emphasis is placed on the scientific assessment of its effectiveness. Research is conducted on the organizational structure of the service, the characteristics of the clients, and its effectiveness. The use of probation then begins a trend toward greater social service and less social control. Efforts are made to develop or improve education and training, living standards and economic conditions, and personal, psychological circumstances. Experiments in group counseling, day-training centers, and hostels increase.

If the experience in Scandinavia is indicative, a sense of disillusionment then sets in in terms of the extent to which probation is actually responsible for any success or failure. Also being questioned is the extent to which a specialized social service mechanism should exist for the courts and offenders when the same functions could be performed, not only as a service, but as a social prophylaxis against crime, by general social welfare agencies. Under these circumstances, the use of probation tends to decrease and the alternatives

such as suspended sentence without supervision, reprimand, and fines become more viable.

No single country has passed through all of the stages just mentioned. However, the Scandinavian countries and the Netherlands have changed their thniking in terms of moving from primarily personal problem solving to dealing with the wider social causes of probation failure. In these societies changes in delivery are related to the increasing number of empirical studies on sanctioning.

There is an uneasy parallel between what is known about the etiology of crime and the failure on probation. Essentially, failure in both areas appears to be a function of the lack of social integration and commitment to conformity. Failure seems more likely in systems which emphasize individualism and less likely when collective social responsibility is assumed. Neither probation as a strict control mechanism nor as a specialized social service agency will work unless there is a better understanding of the process and importance of social integration.

Effective probation requires an understanding of the factors which facilitate integration and the way they work. Relationships within the family, school, community, and work spheres need to be reinforced and used in such integration. Many probation systems have recognized this by increasing family guidance, educational and vocational training, job placement, restitution, socially-useful work, and, in most of the socialist countries, the role of the collective. These efforts are piecemeal in that they deal only with the offender and, as Kuhlhorn suggested in Sweden, may only be "symbols" of progress. What is needed is a reduction in the social blockages which produce not only probation failure, but are related to the cause of crime as well.

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